

**A YEAR AFTER THE DEEPWATER HORIZON OIL  
SPILL: THE STATUS OF RECOVERY EFFORTS  
IN FLORIDA**

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**FIELD  
HEARING**

BEFORE THE

**COMMITTEE ON SMALL BUSINESS AND  
ENTREPRENEURSHIP  
UNITED STATES SENATE**

**ONE HUNDRED TWELFTH CONGRESS**

**FIRST SESSION**

**JULY 11, 2011**

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## **A YEAR AFTER THE DEEPWATER HORIZON OIL SPILL: THE STATUS OF RECOVERY EF- FORTS IN FLORIDA**

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**MONDAY, JULY 11, 2011**

UNITED STATES SENATE,  
COMMITTEE ON SMALL BUSINESS  
AND ENTREPRENEURSHIP,  
*Pensacola, FL.*

The Committee met, pursuant to notice, at 9:34 a.m., in the Amos Performance Studio, Pensacola State College, 1000 College Boulevard, Pensacola, Florida, Hon. Marco Rubio, presiding.

Present: Senator Rubio.

### **OPENING STATEMENT OF HON. MARCO RUBIO, A U.S. SENATOR FROM FLORIDA**

Senator RUBIO. Good morning. First of all, thank you all for welcoming me here to Pensacola. It is a pleasure to be here, despite the serious discussion before us. I would particularly like to thank the Pensacola State College for allowing us to use this beautiful studio. The air conditioning works well—thank you very much—and the staff here has been immensely helpful in helping us prepare for this event.

And I do want to thank some of the people who were not able to attend today's field hearing but who made this possible, Senator Landrieu of Louisiana, who was instrumental in making this possible, as well as Senator Snowe, and their hard-working staffs who are here with us today, for allowing me the honor to conduct this field hearing before the Committee on Small Business and Entrepreneurship.

I particularly want to single out Senator Landrieu for the hard work she has done in keeping folks up in Washington engaged on this much-needed long-term recovery in the Gulf. I was recently asked about—just a few seconds ago asked about, well, has the world not moved on? Have people not forgotten about this? And the answer is, for most of America, this is something that happened a year ago. But for folks, particularly in the Gulf region and here in northwest Florida, this is something that is still happening, and that is why this is so important that this hearing take place and that we continue to talk about this.

A little over a year ago, on April 20, approximately 4.1 to 4.9 million barrels of oil began spilling into the Gulf of Mexico. As a result, the Federal Government closed approximately 88,500 square

miles of Gulf fishing. That negatively impacted 131,000 jobs supported by a \$12.8 billion year industry.

Subsequently, the tourism industry in Florida, the state's largest industry, significantly declined as people canceled their summer vacations in fear of oil-slicked beaches. There is one study that says that 45,000 jobs linked to tourism in Florida's counties along the Gulf of Mexico were impacted. Summer home rentals were down by 80 percent between April 20 and the end of May of 2010. And while the oil-slicked beaches were never realized, I am certain those of us in this room did not need statistics to prove the impacts both on the state and on everyday lives, including the everyday lives of people who find themselves here with us today.

In some way, each of you have lived daily with the impacts from this spill. As of July 7, the Gulf Coast Claims Facility received 184,591 claims and paid over a total of \$1.8 billion. In total, BP has paid \$2.133 billion to the State of Florida. But I think what we are going to hear today is that that is not enough. While tourism has increased over the past year, there is still more to be done, and the long-term effects on our fisheries, an industry vital to both our economy and our tourism industry, may not be known for decades.

I am here today for one reason and one reason only, and that is I want to hear from those worst impacted by the spill on how I can best assist them in my role as the junior Senator from Florida, and I am here to listen.

I understand that there are still significant frustrations regarding the claims process, and I would like to understand specifically what those frustrations are at this point and how you feel they can be best addressed. I would also like to understand what impacts continue to be felt throughout the tourism industry, the seafood industry, and the fishery community so that I can help guide the Federal discussion on how best to assist these industries so vital to our state's economy.

Specifically, I have been working with all of my Gulf state colleagues on legislation spearheaded by Senators Landrieu and Shelby that would redirect to the Gulf states the Clean Water Act funds that BP will likely pay as a result of the oil spill. And in that, I also want to recognize my senior Senator from Florida, Senator Nelson, who has been intricately involved in this conversation, as well. He could not be here today. He had a prior commitment, but he expresses his desire to have been with us here today, and I assure you we are working together on these issues that impact our state.

[The prepared statement of Senator Bill Nelson follows:]

**Senator Bill Nelson**

*Written Remarks*

July 11th, 2011

Senate Small Business and Entrepreneurship Committee

*"A Year After the Deepwater Horizon Oil Spill: The Status of Recovery Efforts in Florida"*

I thank my colleagues Senator Rubio and Chairman Landrieu for holding this hearing to examine the status of recovery efforts in Florida in the wake of the Deepwater Horizon oil spill.

Just take a drive down 399, and you'll see that Pensacola thrives on small businesses that rely on the tourism industry. In fact, that's the case with all of Florida. Folks from around the country tell me fondly about their visits to those powdery white sand beaches along the Florida panhandle. In Florida, our economy is directly tied to the condition of our environment. Just think about how many visitors come to visit the Gulf Islands National Seashore and Fort Pickens State Park. So, I know I speak for many when I say it was devastating last year to watch oil heading for the coast and landing on the beach just as the tourist season was picking up steam.

A year ago tomorrow, BP placed a temporary cap on the broken well, but as we know just stopping the oil did not make victims of the spill whole again. Neither, as it turns out, did BP's establishment of the Gulf Coast Claims Facility. Many Gulf Coast residents who filed claims supported by strong documentation received denial letters and many others received only a fraction of their losses. Some closed their businesses, laid off employees and lost their homes. This created a ripple effect. Retailers, realtors, car dealers, restaurants, and all manner of industries struggled.

There is no doubt in my mind and in his mind, and I think I can speak for him when I say this, that all this money should be sent to the Gulf states. There is no doubt that Florida deserves and must receive their fair share of this recovery money.

So today, I would like to hear from each of our witnesses how this money can be best directed to the recovery efforts that should have started yesterday so that these efforts can start tomorrow. I am here to listen.

I want to quickly recognize two members of State government that are with us here today, elected to represent this region, State Representatives Clay Ingram, who is here—thank you, Representative Ingram—and Doug Broxson, who is here. Doug, thank you for being a part of this, as well. I appreciate both of you being here today, and we are going to open it up after the second panel of witnesses. I would love to hear your perspective on this, as well. I think it is important that we have a strong partnership with our State government officials.

And with that, I segue to someone we are very proud is with us here today, who is on the leading edges of many of these issues that we are dealing with, and this is Commissioner Putnam who joins us here today. Commissioner Putnam has both more Washington experience and now more Tallahassee experience than me and he is younger than I am, which is a small group of people in politics. But he is someone that is uniquely qualified to speak on these issues. He is doing a phenomenal job on behalf of the entire State of Florida, but particularly on behalf of aquaculture, which is a critical part of our economy.

Commissioner, thank you for being a part of this and for sharing your input and insight and for being an excellent partner on these issues with us. Thank you.

**STATEMENT OF ADAM H. PUTNAM, COMMISSIONER, FLORIDA  
DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

Mr. PUTNAM. Thank you very much, Senator Rubio, and most importantly, thank you for being here and physically bringing the attention of the United States Senate to northwest Florida.

As you know, Congress has the attention span of a 20-minute sitcom. A year out, it is critically important to continue to remind our Federal policymakers of the damage that continues to reverberate throughout these Gulf Coast communities. And you have got a great panel of witnesses here and a great legislative delegation that is going to share some thoughts on how Tallahassee has positioned itself and what the continued harm is to our charter boats, to our hotel and restaurant industries and tourism in general.

I wanted to focus my remarks on the seafood side. As Commissioner of Agriculture and leader of the Department of Agriculture and Consumer Services, we are the lead agency in the State for food safety. We are also the lead agency for promoting what we grow and what we raise in the State of Florida through our “Fresh From Florida” campaign. So if I could, I will just take a few minutes and go over what our role in that is.

I would like to begin by just thanking the legislative delegation and Senator Gates, who is also in that northwest Florida delegation, for passing the Deepwater Horizon Oil Spill Economic Recov-



ery Act that, in essence, says whatever fines and settlements do come forward as a result of this horrible tragedy, 75 percent of that will stay in the most impacted communities here in northwest Florida. I mean, it is a no-brainer, but I am glad they codified it in the law, because the last thing we want is for those fines and settlements and recovery restoration monies to turn into a slush fund for other communities that did not have the harm, the real harm, that these eight counties in northwest Florida had.

The seafood industry for the State of Florida is \$600 million of economic impact. Fishing, in general, is \$8 billion—\$8 billion. And so this is an enormous industry for our state and it is one of these great examples of where the health of our environment directly impacts the health of our economy.

In the aftermath of the spill, seafood sales declined between 35 and 40 percent, and over 60 percent of all seafood buyers polled in the immediate aftermath of the spill said that they had lost confidence in the safety of Gulf seafood. A year later, we really have not seen that public confidence number move.

Our responsibility in the Department, and we have negotiated a settlement with BP for \$10 million for additional food safety testing, and when it is fully ramped up, we will be testing 200 samples a week—excuse me, 200 samples a month. We have now run a year out, using existing capacity, we have run several hundred samples and there has been no indication whatsoever of any level of oil residue or dispersant residue, the two things that people are most concerned about, in Florida seafood. So it is a perception problem, not a substantive problem. But the brand that our charter boat captains and our commercial fishermen and our oystermen in Appalachicola and throughout the State of Florida had built over decades and generations was destroyed overnight by the spill. And so our efforts are focused on aggressively ramping up that testing capacity.

We have a world class laboratory in the State of Florida. It is one of the few in the nation that is a state lab also recognized by the U.S. Food and Drug Administration (FDA) and National Oceanic and Atmospheric Administration (NOAA) for seafood safety. We are making investments in that equipment and ramping up the pace of testing, but we have not found any evidence whatsoever that there is a problem with the quality of Florida seafood. But that perception, that brand damage, lingers.

We negotiated a second component to a settlement with BP that involves \$10 million in promoting and marketing to undo that harm, and as you know, having run an expensive statewide campaign, that is a—to rebuild a national brand, it is a drop in the bucket. But that \$10 million is targeted toward the seafood buyers around the country—Philadelphia, New York, Chicago, the big brokers—and the people who go into restaurants and the people who travel to the State of Florida in those key markets.

Many of you have a copy of the latest edition of the Guy Harvey Magazine. We have partnered with Guy Harvey, who is a world renowned artist, but also a researcher and conservationist, to highlight the safety of seafood. You will see in regional publications—Coastal Living, Southern Living, those types of regional markets—a ramped-up presence of Fresh From Florida seafood. You are going

to hear later from Collier Merrill, who took a road tour of chefs up to New York to highlight for them, and I do not want to steal their thunder, but the idea here is that we work in concert with all the different entities so that it is not the Department of Agriculture doing one thing and Visit Florida doing another and the northwest Chamber is doing another, to bring harmony to that on the marketing piece.

It is our goal to begin to bring those confidence numbers back up, and part of the challenge and part of the market in bringing those numbers back up is right here in Florida, because half of Florida seafood is consumed in Florida. And so a lot of the story that we have to tell is with our own Floridians, and the studies have shown that the closer people are to the water, the higher their confidence in Florida seafood.

If you look at the polling, the market research, it is communities like Gainesville, Orlando, places interior, that have a lower confidence in Florida seafood than coastal communities like Tampa or Jacksonville, Pensacola, Panama City, Miami. Those all have higher numbers.

Restoring that confidence is a key part of our effort, but also having the world class testing facilities so that we can say with confidence that there is no residue, that it is safe.

It is important, I think, and this is something that Doug Darling is here from the Governor's Office as his Deputy Chief of Staff, and I know he has worked real hard on the Natural Resource Development Assessment (NRDA) process. It is important that at the end of this saga, at the end of this tragedy, that whatever has been done, we can look back ten years from now, 15 years from now, and say, this is a permanent benefit to these communities in northwest Florida. I do not think any of us want to see a situation where we look back and say, well, we spent a lot of money on billboards and magazine ads and we do not really have anything to show for it. There are conversations out there about real infrastructure investments that will improve the quality of the fishery, improve our ability to continue to bring in charter business, commercial business, continue to do good things with our tourism business and our seafood business. That more permanent view of how we use those dollars most wisely is critically important to protect that \$8 billion industry and expand it even more.

And so with that, Senator, thanks for letting a House guy come to a Senate hearing, and thank you for your commitment to restoring these communities to their pre-spill levels and, frankly, even using this as an opportunity to make some improvements. But from our standpoint, we have a great story to tell. The science is with us. The harm is not there from a scientific basis. The harm continues to be there, though, from an economic basis, and that is what these communities and small businesses have to live with every day, one year out.

[The prepared statement of Mr. Putnam follows:]

Written Testimony of  
Adam H. Putnam, Commissioner  
Florida Department of Agriculture and Consumer Services  
As submitted to the  
U.S. Senate Committee on Small Business and Entrepreneurship  
July 11, 2011

Senator Rubio, thank you for the opportunity to appear before the committee this morning to discuss an issue of great importance to the State of Florida and the Gulf Region as a whole. As Florida Agriculture Commissioner, I will take this opportunity to share the Florida Department of Agriculture and Consumer Services' perspective on the status of recovery efforts following the tragic explosion of the Deepwater Horizon drilling rig. As we all know, the explosion and the resulting oil spill has caused damage throughout the Gulf states that will continue to be felt for years to come. Costs associated with recovery of sensitive environmental habitats, the fishing industry and lost tourism are not fully known, but it is clear that the impacts on the Gulf states' natural ecosystems, people and economy are enormous.

On April 20, 2010, Deepwater Horizon exploded in the Gulf and created a domino effect, toppling all the businesses that depend on the resources and the beauty of the Gulf of Mexico, including the Florida's seafood and aquaculture industries. Less than two weeks following the explosion, U.S. officials closed fishing in areas affected by oil spill for 10 days. Restaurants immediately felt the pain and because nearly half of all Florida seafood is eaten in restaurants, the seafood industry plummeted almost overnight. First reports revealed sales of all seafood had declined an average of 35 to 40 percent. According to a survey, 61% of all seafood buyers polled said they were concerned about the safety of Gulf seafood and were buying less of it.

It's been more than one year since the Gulf oil spill and we have yet to see a significant rebound in consumer confidence. In a survey conducted May through June 2011, results show 61 percent of consumers remain concerned about the safety of Gulf seafood, 59% remain concerned about unforeseen risks and 45% are concerned about the availability.

The extremely low consumer confidence in the safety of Florida seafood affects more than just the 13,000 licensed commercial fishermen. Florida's seafood and aquaculture industries have an economic impact of nearly \$600 million. Our fishermen and their corresponding businesses – charter boats, restaurants, hotels, seafood distributors and processors – all continue to suffer. Yet, testing shows that Florida Gulf seafood is safe and plentiful.

The Florida Department of Agriculture and Consumer Services holds the primary responsibility for ensuring safety of seafood for consumers. We play an equally important, but independent role, in promoting Florida agricultural products and I will address these areas separately.

First and foremost, the Florida Department of Agriculture and Consumer Services is the lead state agency for food safety. We are responsible for ensuring that all foods offered for sale meets state and federal standards for safety and quality and are accurately labeled. As it relates to this incident, my Department is unique among many states in having the laboratory capability and expertise to conduct the same testing used by the U.S. Food and Drug Administration (FDA) and National Oceanic and Atmospheric Administration (NOAA) to evaluate seafood for the presence of polycyclic aromatic hydrocarbons (PAHs) and dioctyl sulfo-succinate (DOSS), which indicate contamination with either oil or the dispersant associated with this event.

Since August 2010, my Department has collected nearly 300 seafood samples. The sampling, which targets Gulf species commonly consumed as well as higher value species, included 208 individual fish samples. In addition, the sampling targeted species more likely to contain oil residues such as shrimp and shellfish, including 38 shrimp samples (1/2 lb of shrimp = 1 sample), 34 oyster samples (15 oysters = 1 sample), 15 crab samples (10 crabs = 1 sample), 2 lobster samples and 1 clam sample. These samples are collected at “primary” processors – those businesses which receive their fish directly from the fishing vessels, so that location of harvest is known. In this way, we are able to identify the waters where the fish were harvested – a critical piece of information needed to ensure that the product being tested is product of greatest risk of exposure to the oil. Nearly all (87%) of the samples tested contained no detectable levels of oil contaminants. Of the 300 seafood samples tested, less than 13 percent were found to have any traces of possible oil contaminants whatsoever. All findings of traces were less than 1/1000<sup>th</sup> of the FDA’s levels of concern. Our testing shows that Florida seafood is safe to eat and has not been impacted by the oil spill.

In spite of this, media footage showing oiled beaches and wildlife continues to plague our seafood and tourism industries. Florida’s Gulf coast is suffering from a perception problem. Though science shows that seafood is safe, consumers believe otherwise.

As I mentioned earlier, my Department is also responsible for promoting Florida agricultural and seafood products. We are working to restore consumer confidence in Florida Gulf seafood by raising awareness in its proven safety. We have launched multiple marketing, advertising and promotional campaigns to reassure consumers that our seafood is safe. As early as May 2010, we initiated an aggressive public education campaign to communicate the facts about Florida seafood, fishing closures and differences between state and federal waters. Live

webcams were strategically placed around the state's Gulf coast to allow consumers to "Sea for Themselves" that Florida's fishing docks, retail fish markets, and restaurants were open for business and not covered with oil. Immediately after that quick-strike, we established a "Florida Gulf Safe" hotline to explain boundaries of closures and marketing conditions associated with various seafood product (for example, oysters are harvested from state waters only and no Florida oyster beds were closed as a result of this spill). We promoted the hotline statewide on television, newspapers and billboards.

In August of 2010, industry sales remained stagnant at 25 to 30 percent below normal levels. With the capping of the oil well, our marketing strategy shifted to "A New Day on the Gulf" and incorporated new television ads, newspapers, magazines, social media and Internet venues.

As recently as June of this year, consumers were still balking at Florida seafood. While we witnessed slight improvement in some markets following additional media outreach, March polling still indicated little movement, and as we approached the anniversary of the oil spill, file footage of oily beaches – nowhere near Florida – once again rattled consumer confidence. The entire year was radically different from other food safety events we've seen, such as the spinach, peanut butter or tomatoes, where "consumer comeback" was somewhat predictable and purchasing habits soon returned to - or near - pre-event patterns.

Lastly, my Department has been providing assistance to our seafood industry with the very convoluted Gulf Coast Claims Facility process. We have provided producers with our data to assist with documentation in support of their claims. We have witnessed repeated inexplicable delays and findings and this area remains extremely problematic. It is clear from talking with affected parties that much still

remains to be done to assure that people whose livelihoods have been impacted by the Deepwater Horizon spill are compensated.

I believe my comments thus far lay out our current situation – one where we can objectively demonstrate a healthy, unadulterated supply of Gulf seafood and yet, despite efforts to provide reassurance, consumers remain unconvinced. Seafood is safe yet consumers have not resumed previous purchasing and consumption habits. The industry continues to suffer and businesses are still struggling.

BP has committed \$20 million to the Florida Department of Agriculture and Consumer Services, independent of funds set aside for other damage assessment or restoration purposes, to enhance the Department's sampling efforts and to rebuild consumer confidence in the proven safety of Gulf seafood. Half of the funds are supporting reconfiguration of the Department's laboratories to accommodate increased sampling from our current 20 samples per month to 20 samples per week. Recognizing that fish caught and landed on the Gulf coast is marketed throughout our state, sample collection will expand from the Panhandle region throughout Florida. In addition, we are partnering with the Florida Fish and Wildlife Conservation Commission to collect samples directly from previously closed waters or other locations where it is deemed necessary.

The other \$10 million from BP will be dedicated to marketing Florida seafood. Starting this month, you will see the most aggressive marketing effort ever launched on behalf of Florida's seafood industry. We will train, educate and inform the industry from 'hook to cook.' Cutting-edge technology will be used to train wait staff in restaurants. Television, newspapers, toll booths and billboards will be plastered with Florida Gulf Safe messages. *Southern Living*, *Coastal Living*, *Garden and Gun* and *Guy Harvey* magazines will feature Florida seafood. In addition, we are working with more than 5,000 retail outlets to provide

financial incentives to rebuild the Florida seafood brand. If you attend any one of the hundreds of seafood festivals in Florida – or just sit at a computer on Facebook, you’ll see that Florida seafood is safe, abundant and affordable.

We are pleased that we were able to reach this settlement with BP. Without their funding, the Department would not be able to provide this level of testing to assure seafood safety; nor would we have the means to offer the marketing efforts to assist in rebuilding confidence in this industry. However, I must also emphasize that the full extent of impacts from this spill are not yet known.

It will be costly, yet necessary, for the state to continue to monitor the Gulf ecosystem to evaluate and address the long-term impacts of the spill. Further, it is obvious by talking to individuals and businesses that have been affected by this disaster that much is left to be done to help them fully recover from the economic hardships they have been faced with. I believe we must accept the fact that the effects of this spill will not be fully understood for some time to come and that we must remain committed to making Florida and the other Gulf states – our people and our environment “whole”.



Senator RUBIO. Well, thank you, Commissioner.

First of all, the Commissioner has a big state to serve and so he does a lot of driving these days. He drove all the way to Tallahassee last night and drove all the way over here this morning. I know he has to drive back and continue the hard work, but I do have a few questions, Commissioner, that I hope you can help us with.

One is one you understand very well, and that is that as Congress begins to consider what to do with the money that comes from these fines—this is a big pot of money, and as you can imagine and I know you know well, once there is a big pot of money available in Washington, people get all kinds of ideas. So that is the first thing we are going to have to confront. Obviously, I think there will be consensus in this room that that money from those fines should be specifically targeted to those states and those regions that were most directly impacted by this bill because that is why the fines happened.

The question I have is, and you have already kind of alluded to it a little bit, the second part of our conversation is that once we decide, yes, this money should be designed specifically for those regions that were impacted by the oil spill, what kind of projects should we be prioritizing? What kind of expenditures should we be funding? I think what you are going to hear is all kinds of arguments, and not necessarily from our delegation, or from anyone, for that matter, elected, but extended to its most absurd conclusion, you could argue anything is economic development if you really wanted to.

So, in essence, where do you think we can get the most bang for our buck? I read this morning an editorial here locally that talked about how we should focus on environmental clean-up issues, that, in fact, the environment is directly linked to the economy. I think that is a valid point. Others, I think, will tell us today that there are some economic incentives and economic development projects that could potentially help to offset or diversify or balance out some of the losses. I think you have talked about some of the things that maybe not enough attention is being paid to, and it is just maybe public perception, public awareness-type campaigns, where, in fact, where there is not a problem but people think there is a problem, that one of the things we should be doing is educating people to the fact that there is nothing wrong with our seafood, that there is no reason why you should not be coming to our beaches.

What is your thought process in terms of what I should be saying on where we should be prioritizing the type of projects—the types of projects that we should be prioritizing?

Mr. PUTNAM. Well, I think that is the key question, and as you alluded, it is important that the non-affected states, the non-Gulf states, not have their finger in the cookie jar. We do not want to see research and development opportunities diverted to other universities because there is an oceanography department in Indiana. I mean, that is the classic Congressional ploy that we have all seen before, where a well-placed person will use it as their earmark fund, and that cannot be allowed to happen. Those funds need to come to the impacted states and the impacted communities within those states.

I think continued research is critical. Even before the spill—and I suspect that Captain Zales is going to touch on this—even before the spill, a lot of our fishermen were under assault by Federal regulations based on flawed models that had dramatically curtailed their ability to harvest. And so I think that there is, frankly, an opportunity and a nexus between the resource and the harm, the tragedy done by the spill, that funds go into stock enhancement and development activities, such as continued reef development.

There have been some ideas floated about locating buoys and markers a certain number of miles offshore to build the bottom fishing, to create the artificial reefs, to guarantee that it takes pressure off some of the more near-shore areas and gives charter boat captains a place to go. Reef restoration for your shellfish, for scallops and oysters. A lot of those reef development opportunities are out there.

Other stock enhancement things include hatcheries, which other states have been doing for a long time and Florida has been doing successfully on the fresh water side, but I think a hatchery-type situation is a permanent gift that keeps on giving. It continues to build that ecosystem and build that fishery that draws people here for world class fishing, world class beaches, world class seafood, and you have all of those things interconnected and there is a nexus between that gain and the harm that was done by the spill.

So those types of permanent things, I think, are important. It is critical for the local communities, the local lawmakers and commissioners to have some say in that. I think that this is not a situation where Washington should dictate what all of these projects are. I think Florida has done a good job developing a consortium of all of our state universities to avoid them fighting with one another over research dollars. I think that that consortium concept has worked fairly well in terms of channeling the research and development dollars that have already come and creating a model for future dollars.

So those are some of my thoughts on how we proceed. But I do think it is important that workforce development and retraining efforts, the research and development pieces, and the restoration and stock enhancement pieces of that puzzle be a part of that final use of those dollars.

Senator RUBIO. I think the only issue that I think is—that, again, has a political dynamic to it, as well—is once the money, God willing, reaches the State of Florida and that money begins to be spent through state entities and counties, et cetera, are some of the regional conflicts that begin to emerge with regards to how that money should be spent and who was impacted more and so forth and so on. Kind of the direction I have been headed in my thought process, and I would be interested to see your input on it because I am open-minded on all these things, is that what we need to decide is on the type of projects you have just outlined, a bunch of them, and let the money chase the projects as opposed to the money simply chasing the geography, and I think what you will find if you do that, if the money goes after the projects rather than just the geography, you will find that the geographical areas that were more impacted are going to see themselves being treated fairly.

But that is an issue that has become recurrent and I would not put the horse too far ahead of the cart here, because I can assure you that this issue of how the money is going to be spent is going to be—it has some ways to go in Washington, and the direction it is headed in some regards has been interesting, to say the least. It is a crash course for me in the politics of how money is spent up there.

But just any thoughts about how we manage that once the money gets here, between regions? When I mean regions, I think there is general consensus, by the way, in the state, from everyone I have talked to, that we are talking about the Gulf region. We are talking about regions within the Gulf region. We are not talking about people down in Key West thinking they should be at the table the same way that people in the Gulf region are with regards to oil spill impact. I am talking about different counties and different potential projects that may be competing with each other here in this region for the same availability of funds.

Mr. PUTNAM. Well, you know, I think, clearly, this tragedy did impact the entire state. There were lost bookings throughout the state and a perception problem throughout the state. But the bulk of the actual harm is in these eight counties, and because of the leadership of the legislative delegation, there is now some certainty that the bulk of the funds from fines and settlements will come to northwest Florida and to these eight counties.

The eight counties, and I think your point is well taken, they need to be wise enough to understand that this is one of those moments for regionalism. This is not the time for the Panama City versus Destin versus Pensacola fight. I mean, this is what do we do to market our region? What do we do to repair our region? What do we do to build our resources that are the reason why people come to our region? And I know that that is easier said than done with a lot of impacted parties and a lot of sub-units of government.

But this is one of those times when all of us need to step up as a region and say, this is what we need to do for northwest Florida and all of us will benefit if we have something that channels our energy in the same direction instead of splintering off, because if we splintered off, in five or ten years from now, we are going to look back and say the State of Florida got over \$100 million and what do we have to show for it? Do we have new pilings at the marina? Do we have waitresses and waiters who were given \$8,000 to \$15,000 that was a shot in the arm in the economy for a short period of time, but we have not done anything to fundamentally strengthen our economy and build on the pillars that we have with seafood and tourism and the military to really build that generational difference, and that is why we have got to think regionally on this one.

Senator RUBIO. Commissioner, I appreciate your time. I know how busy you are. As we told you at the outset, you are welcome to stay the whole hearing. I know you have other commitments and places you need to go, so we are just grateful you made the drive to be a part of this day and we look forward to continue to work with your office on these issues.

Mr. PUTNAM. Thank you for the great work you are doing for the State of Florida in Washington, and more power to you.

[Laughter.]

Senator RUBIO. Better me than you, right?

[Laughter.]

Thank you.

Mr. PUTNAM. I appreciate it.

[Applause.]

Senator RUBIO. We are going to call our second panel now and I will introduce them.

First is Mr. Collier Merrill. All of you know him well. He is the Chairman of the Pensacola Chamber of Commerce. We have Mr. Joe Gilchrist, who is the owner of the Flora-Bama Lounge, Package, and Oyster Bar, and Captain Robert Zales is the President of the National Association of Charterboat Operators. They are going to take their seats up here and——

[Pause.]

Captain, why do we not start with you. Are you ready?

**STATEMENT OF ROBERT F. ZALES II, PRESIDENT, NATIONAL ASSOCIATION OF CHARTERBOAT OPERATORS AND PANAMA CITY BOATMEN ASSOCIATION**

Mr. ZALES. That is all right with me. I am ready. Thank you very much.

Senator RUBIO. All right. Thank you for being a part of this.

Mr. ZALES. Thank you. Senator Rubio, my name is Robert F. Zales II. I am appearing today on behalf of the National Association of Charterboat Operators and the Panama City Boatmen Association. NACO and PCBA thank you and the committee for your kind invitation to present testimony on the critical issue of the impact of the Deepwater Horizon oil spill and status recovery efforts in Florida.

NACO is a nonprofit 501(c)(6) association representing charterboat owners and operators across the United States, with a substantial number in Florida. PCBA is a local association representing the local charterboat fleet in Panama City. I also wish to point out that I am a simple charterboat operator and not accustomed to providing formal testimony such as this, so please pardon my rambles in what I provide.

Charter, commercial, and saltwater recreational fishing is extremely important to Florida and the Gulf of Mexico, both economically and socially. In 2008, there were 90,000 Floridians directly employed in recreational fishing-related businesses. Florida alone accounts for 40 percent of all marine recreational fishing nationally, with \$9.7 billion in total sales from recreational fishing in 2008.

As a result of the blowout, charter fishing customers began canceling their trips and family vacations. This began the end of the fishing season, which had begun as a promising season after the last two years of overly restrictive Federal regulations and sour economies. The Gulf Coast Claims Facility (GCCF) was established to provide those affected by the impacts of the spill with their economic losses. To many of us, the GCCF has been a massive failure, as our claims are either still in review or ridiculous offers have been made. We see recent reports from commercial and recreational fishermen of harvested fish being seen with several

health issues, and according to the National Marine Fisheries Service (NMFS), possibly infected with *Vibrio vulnificus*, very harmful to humans. More important, more studies are now underway to determine the extent of this issue and to attempt to discover the cause. This year, Mother Nature has provided great weather. Our waters appear to be clean and free from oil in areas we can see. Our fishing, with the exception of the sick fish, has been as good as ever and business has been good for most. Still, we live in fear of the future.

Millions of gallons are still unaccounted for and located somewhere. The fish we see harvested are from year classes prior to the blowout. The 2010 year class for many of the prime species is highly questionable. Contrary to a report produced by Mr. Kenneth Feinberg released on January 31, 2011, stating harvest levels will return to normal by the end of 2012, several renown fishery biologists say it will be a minimum of three and could be five years or longer before we have any real knowledge of the impact of these species.

Our future needs: It is imperative that the fines that will be assessed as per the Clean Water Act (CWA) for this disaster in the Gulf are dedicated to the Gulf. You will hear from many organizations, communities, states, and others, all with their respective hands out for funding. Charterboat owners do not have organizations with the infrastructure to seek this funding, so we ask for your assistance to help us. We do not seek individual economic help from the CWA fines, although we should—should we find in three to five years that the fish species we seek are in dire straits, we will certainly need financial assistance to survive.

Our needs are resource oriented. We must have an ecosystem that is capable of sustaining our fishery resources. We must expand funding for cooperative independent research of our fish which will utilize vessels from the charter fishing fleet. This data is recommended by the NMFS and can be done through grants to nonprofits in conjunction with universities and state wildlife agencies.

Funding for improved and yearly stock assessments should be provided. In the Gulf, most fish stock assessments are conducted only every five to seven years. We need adequate funding to ensure our natural and artificial reefs are clean and intact. Enhancing our artificial reef system is a priority.

Research funding to further study fish health must also be a priority. Our prime interest is to ensure that the fish we harvest are safe to handle and consume. We must know with reasonable certainty that any fish that appears to be unhealthy is properly handled and tested so that consumers can have confidence that are catching and eating quality Gulf seafood. Many of the fish health issues have never been observed before the blowout, so it is a must that the cause of any health issues be known as soon as possible.

Funding from the CWA should also be used to advertise that the charter fishing fleet is alive, well, and ready to serve the public. I suggest that a panel of a variety of stakeholders be created who will be responsible to distribute CWA funds for the various needs of the gulf. Politics and the buddy system should be removed from the process. Once the funds are received and proposals for the var-

ious research and renewal projects are provided, the panel should be charged to make recommendations that will ensure the most important and effective projects are funded and activated. There must be stipulations that the charter fleet will be actively involved in fishery independent research.

In closing, I wish to state that the Gulf Charter Fleet was once a viable, productive, and sustainable group of small business owners. We provide a necessary service to individuals who want to fish and enjoy our natural resources. Over the last six years, the fleet has struggled and yet continues to survive. The impact from the Deepwater Horizon oil spill was almost the last nail in the coffin. It is imperative that the CWA fines be dedicated to the Gulf, that they be properly utilized to ensure the health and safety of our Gulf, and ensure the sustainability of the charterboat fleet.

The charterboat fleet owners, operators, and crews are the first responders to any issue on the water. We care for our Gulf and all things within and around.

Senator, this concludes my testimony. Again, I appreciate the invitation and opportunity to provide you and the committee with this information and I will be pleased to answer any questions.

[The prepared statement of Mr. Zales follows:]

**WRITTEN TESTIMONY  
OF  
ROBERT F. ZALES, II  
PRESIDENT  
  
NATIONAL ASSOCIATION OF CHARTERBOAT OPERATORS  
PANAMA CITY BOATMEN ASSOCIATION  
  
FOR HEARING  
A YEAR AFTER THE DEEPWATER HORIZON OIL SPILL:  
THE STATUS OF RECOVERY EFFORTS IN FLORIDA  
  
BEFORE THE  
UNITED STATES SENATE  
COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP  
  
JULY 11, 2011**

Madam Chairwoman and members of the committee, my name is Robert F. Zales, II and I am appearing today on behalf of the National Association of Charterboat Operators (NACO) and the Panama City Boatmen Association (PCBA). NACO and PCBA thank you, the Committee, and Senator Rubio for your kind invitation to present testimony on the critical issue of the impact of the Deepwater Horizon Oil Spill and the Status of Recovery Efforts in Florida. Congress faces many difficult choices but also has many opportunities.

NACO is a non-profit 501 (c) (6) association representing charter boat owners and operators across the United States with a substantial number in Florida and PCBA is a local Association representing the local charter boat fleet. Sadly, we are acutely aware of the devastating impact of the Deepwater Horizon Oil Spill on the Gulf of Mexico and Florida charter boat industry. Indeed, on behalf of NACO Gulf and PCBA members, I was and am still actively involved in working with Federal, Florida, BP, and local

representatives on the impacts to charter boat fleets and their involvement in cleanup, economic recovery, and resource damage assessment efforts. I also wish to point out that I am a simple charter boat operator and not accustomed to providing formal testimony such as this so please pardon my rambles in what I provide.

Charter, commercial, and saltwater recreational fishing is extremely important to Florida and the Gulf of Mexico, both economically and socially. In 2008 there were 90,000 Floridians directly employed in recreational fishing-related businesses. Florida alone accounts for 40% of all marine recreational fishing nationally, with \$9.7 billion in total sales from recreational fishing in 2008. Reef fish (a general term including snappers, groupers and other families of bottom-dwelling species in temperate and sub-tropical waters) are vital to Florida's fishing economy. They are a main target for the recreational boating community, and are highly prized by anglers fishing the Gulf of Mexico.

The Deepwater Horizon oil spill began on April 20, 2010 and immediately began to devastate the Gulf of Mexico marine resources, economies, and social infrastructure. This devastation increased daily and only began to lessen once the well was temporarily capped in mid July and permanently shut in on September 20, 2010. While the oil flow was stopped, the chemicals applied to disperse it continued being dumped into the Gulf. In addition to the physical impact on marine resources causing severe economic losses to fishermen and their communities, the national media created mass hysteria by their reporting only negative stories to the public indicating massive layers of oil on all of our beaches and in our waters.



The National Marine Fisheries Service (NMFS) closed up to 36.6% of all Gulf waters to fishing and harvest of fish as of June 2, 2010 with varying degrees of percentage before and after with the last reported closure of 0.4% as of November, 2010. While these closures were activated to ensure the health to consumers from eating possible tainted fish, the impact on the charter fishing fleet and communities was enormous.

As a result of the blow out and subsequent media exposure, charter fishing customers began canceling their fishing trips and family vacations. This began the end to the fishing season which had begun as a promising season that we all looked forward to after the last two years of overly restrictive Federal regulations and sour economies. Shortly after the BP well blew out, they initiated the Vessel of Opportunities (VOO) program which was designed to provide economic help to those on the water workers such as charter boat owners, operators, and crews while also increasing the size of the recovery effort fleet. While the VOO program was designed to assist those impacted the most, as with other such programs there was abuse and some charter boat owners, operators, and crews were not able to participate.

The VOO program was both a blessing and a detriment as returning charter fishing customers could not fish with their favorite Captain and in some cases found other areas of the country to fish. Some of these return customers may never come back to Florida thus further affecting the Florida and local economies. In addition there is the Gulf Coast Claims Facility (GCCF) which was established to provide those affected by the impacts of the spill with their economic losses. To many of us, the GCCF has been a massive failure as our claims are either still in review or ridiculous offers have been made.

From the beginning of this disaster, various Government (Federal and State) agencies were active in obtaining information and working with all parties to ensure that our marine resources were unaffected as much as possible. Fish sampling by various agencies, led in Florida by the Florida Fish and Wildlife Conservation Commission (FWC) and the Florida Department of Agriculture, began shortly after the blow out. Critical testing of fish tissues to determine any health issues was done and according to reports by all agencies involved, no health issues were determined and all fish from the Gulf were declared safe to consume.

Over the past several months, there are now reports from some fishermen (commercial and recreational) of harvested fish being seen with severe lesions, fin rot, damaged internal organs, and according to the NMFS possibly infected with *Vibrio vulnificus* and *Photobacterium damsela*, both very harmful to humans. More studies are now underway to determine the extent of these issues and to attempt to discover the cause. In some areas of the Panhandle of Florida, the FWC has issued Special Activity Permits to select charter boats to legally harvest any fish that appear to have health issues and not include them in the customer bag limit. These fish are then provided to the proper FWC officials to be studied.

Since 2004, the Gulf of Mexico has sustained one disaster after another. Hurricane Ivan was very destructive and devastated many of the coastal areas from Panama City through Mississippi. 2005 saw the worst hurricane events in recent history with the 3 largest and most destructive storms of Katrina, Rita, and Wilma. The Deepwater Horizon blow out has been characterized as similar to hurricanes in the impacts it had on our marine resources, communities, fishermen, and our families. Living through numerous hurricane

events in my 46 years on the water, I can tell you that the BP blow out is far worse than the most destructive storm.

All experts will tell you that an area hit by a hurricane will take up to 3 years to recover to their condition prior to the storm. A hurricane will arrive with notice to prepare, the BP blow out was unannounced. Damage from a hurricane can be fully assessed and preparations are made to restore the areas affected. Marine resources are temporarily affected but generally recover quickly; in some cases to more productive levels as Mother Nature has a way of taking care of her resources. The social and economic impacts can be fully assessed and the costs of recovery projected. The psychological effects are known and the future can be predicted with reasonable certainty.

In contrast, the BP blow out impact is far different. It was unannounced; no one was prepared for the impact on the marine resource, the communities, individuals, or families. No one knew how long the spill would continue or when it would be sealed off. No one knows the full impact the blow out will have and worst of all, no one is able to predict the future and what impact the blow out will have on the Gulf of Mexico. We do know that the charter fishing fleet was struggling prior to the blow out due to the overly restrictive federal fishing regulations. Those of us who spend our time on the water have a good understanding of the real condition of our marine resources as we depend on them to survive. At this time, we have no idea of what the impact of the blow out will be on our future survival.

So far this year, Mother Nature has provided great weather, our waters appear to be clean and free from oil in areas we can see, our fishing, with the exception of the sick fish, has

been as good as ever, and business has been good for most. Still, we live in fear of the future. Millions of gallons of oil are still unaccounted for and certainly is located somewhere. The fish we see and harvest are from year classes prior to the blow out. The 2010 year class for a lot of the prime species we seek (red snapper, king mackerel, bluefin tuna, yellow fin tuna, wahoo, dolphin, and others) is highly questionable. The timing and location of the blow out could not have been worse as the time of year and location of the oil and chemicals used were in the bull's eye to do the most harm.

Contrary to a report produced for Mr. Kenneth Fienberg (*An expert opinion of when the Gulf of Mexico will return to pre-spill harvest status following the BP Deepwater Horizon MC 252 oil spill*) released on January 31, 2011 that states that harvest levels will return to normal by the end of 2012, several renown fishery biologists, say it will be a minimum of 3 years and could be 5 before we have any real knowledge of the impact on these species.

In addition to the fish species we seek, the marine mammals, turtles, sea birds, natural and artificial reefs, sand and mud bottom, and complete ecosystem has been affected. It will be years before we fully know the impact to these very important resources and how that impact will affect the whole. While the impacts to the resources are extremely important, the impact to humans will be substantial. There is currently a study (*GuLF Study* conducted by the National Institute of Environmental Health Sciences (NEIHS)) which will be done over a 10 year period and involve over 55,000 people who worked in the cleanup process to determine any health impact on humans. This includes psychological as well as physical issues.

## **FUTURE NEEDS**

I have attempted to provide the impacts of the blow out above. I will try to provide the needs we have for the future. IT IS IMPARATIVE THAT THE FINES THAT WILL BE ASSESSED AS PER THE CLEAN WATER ACT (CWA) FOR THIS DISASTER IN THE GULF ARE DEDICATED TO THE GULF! The damage was sustained in the Gulf so the resulting fines should remain in the Gulf. You will hear from many organizations, communities, states, and others all with their respective hands out for funding. Charter boat owners, operators, and crews and other commercial and recreational fishermen do not have organizations with the infrastructure to seek some of this funding so we ask for your assistance to help us. We do not seek individual economic help from the CWA fines, although should we find in 3 to 5 years that the fish species we seek are in dire straits we will most certainly need financial assistance to survive.

Our needs are all resource oriented. We must have an ecosystem that is capable of sustaining our fishery resources. We must have expanded funding for cooperative independent research of our fisheries which will utilize vessels from the charter fishing fleet. Cooperative independent research is providing much needed real world data on our fisheries and this effort needs to be vastly expanded. The data collected under cooperative research grants involves real fishermen in areas where they have knowledge of their fisheries. This type data is recommended by the NMFS and can be done through grants to non profits in conjunction with Universities and state wildlife agencies.

As a result of the damage and uncertain future of fisheries due to the blow out, funding for improved and yearly stock assessments should be provided. In the Gulf, most fish stock assessments are conducted only every 5 to 7 years. Under the current circumstances

5 to 7 years is grossly inadequate as we must know the status of our stocks on a more frequent basis to fully understand any impact from the spill.

We will need adequate funding to ensure our natural and artificial reefs are clean and intact. Enhancing our artificial reef system is a priority and can start with the immediate cease and desist by the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) of their required removal of deactivated offshore oil platforms. Since the blow out, BOEMRE has expedited the removal of these deactivated platforms which removes much needed fishery habitat from the Gulf.

Economic and social impact studies of the Gulf charter fleet should be fully funded so we know the real impact of the fleet to local fishing communities and the Gulf. To date, these studies provide little relevant information. This is one area where the GCCF claims issue could be improved. There is little information that provides the type of economics on the charter fleet that can be used to fully understand the impact from lost business. Charter boat owners, operators, and crews are unique in how they operate. The charter fleet is a seasonal business where the majority of their income is derived in a few months and then spread out over the year. When the season begins in April and runs through September the money is made in 6 months and then utilized over 12. Generally income is not collected per month or week although expenses are year round.

Research funding to further study fish health must also be a priority. Our prime interest is to ensure that the fish we harvest are safe to handle and to consume. We must know, with reasonable certainty, that any fish that appears to be unhealthy is properly handled and tested so that consumers can have confidence they are catching and eating quality Gulf

seafood. Many of the fish health issues have never been observed before the blow out so it is a must that the cause of any health issues be known as soon as possible.

Funding from the CWA should also be used to advertise that the charter fishing fleet is alive, well, and ready to serve the public. Funds must be provided to obtain new customers lost and to notify those who left that we are still here and ready to fish in clean water and catch quality fish.

I suggest that a panel of a variety of stakeholders be created who will be responsible to distribute CWA funds for the various needs of the Gulf. Politics and the buddy system should be removed from the process. Once the funds are received and proposals for the various research and renewal projects are provided, the panel should be charged to make recommendations that will ensure the most important and effective projects are funded and activated. There must be stipulations that the charter fleet will be actively involved in fishery independent research.

In closing I wish to state that the Gulf charter fleet was once a viable, productive, and sustainable group of small business owners. We provide a necessary service to individuals who want to fish and enjoy our natural resources. Over the last 6 years the fleet has struggled and yet continues to survive. The impact from the Deepwater Horizon oil spill was almost the last nail in the coffin. It is imperative that the CWA fines be dedicated to the Gulf, that they be properly utilized to ensure the health and safety of our Gulf, and ensure the sustainability of the charter boat fleet. The charter fleet owners, operators, and crews are the first responders to any issue on the water. We are on the water daily, we see the condition of our resource and are first to report any problem. We

beg to provide information on fisheries to an agency, NMFS, who routinely tells us they know our resource better. We hold a wealth of information and want to be actively involved. We care for our Gulf and all things within and around.

Madam Chairwoman, this concludes my testimony. Again, I truly appreciate the invitation and opportunity to provide you and the committee with this information. I will be pleased to respond to any questions.



Senator RUBIO. Thank you, Captain.

We will move next to Mr. Gilchrist. Thank you for being here today and being a part of this field hearing.

**STATEMENT OF JOE GILCHRIST, OWNER, FLORA-BAMA  
LOUNGE, PACKAGE, AND OYSTER BAR**

Mr. GILCHRIST. Thank you, Senator Rubio. I wanted to make a couple of remarks before I got into my prepared statement.

One was I agree with Mr. Putnam that long-term investment in our communities is critical. At the same time, we have short-term needs and promotion for the communities to rebuild the economic and tourism structure and others. Obviously, what we need long-term is a balance between environmental investments, including artificial reefs, and shorter-term promotions of the area.

And I will also say that I went snapper fishing last week and caught an excellent red snapper to eat. Obviously, I am not starving.

One of the concerns of our coastal communities—and these are as relayed to me by my employees and customers and people that I meet from all over the world—relating to the disastrous oil spill was, frankly, that poor stewardship by the United States Government got us here. With all the money that has been cycled through Federal, State, and local agencies, to have no one be prepared for something to go wrong is not logical. In fact, the planning and protection of our society has been a disappointment to a lot of Americans.

Sadly, also, news media in America. I saw the same picture on TV of a pelican in Louisiana for 90 straight days. That pelican survived, but it did not seem to be proper stewardship of the nation's best interests. I have no problem with accuracy in news reporting, but it seemed like the only goal of many people in the news media was to get more people to watch.

BP and the other companies have all created a resolution process that has been very favorable to some people, and they are happy. Some people have abused it. But, unfortunately, there is a residual number of people and businesses that have not had resolution to this and I do not think that is successful for our society. I would like to encourage some outside-the-box thinking to help get some resolution, perhaps some ombudsman intermediary between Mr. Feinberg's team and the people that are not able to reach resolution, because it seems an awful lot of arbitrary decisions are being made by people that nobody can find, nobody can document, and nobody can hold accountable.

My business is fairly representative of the coastal communities, I believe, along the coast from Louisiana through Florida. We deal with tourists from all over the world and in our regions, and I think we were looking at a 10- to 15-percent gross increase in each of 2010 and 2011. We went from being about 15 percent ahead of prior year's business in April to where we were 15 percent below in 2010. The net result is that at this point in time, our businesses and the ones that I oversee, look at, are only up six to eight percent over 2009, and since most net income comes from the last 20 or 30 percent of your gross income, it severely impacted our ability to

grow, pay for ourselves, and, of course, pay for the 50 percent of our gross that goes to Federal, State, and local governments.

And our real estate, construction, and recreational communities were and are still struggling with after-effects of this. I think some more longer-term, medium-range investments in the coastal communities will probably be helpful. Of course, this is all in the middle of our current economic challenges that everyone has across the country.

Finally, we should not forget that BP promised to make our communities whole, and I think this is a difficult project to do, but I believe that it requires more time to do so and so I would encourage us to look at two- to five-year time frames of periodic investments in the communities.

Finally, I just end up with some questions. As a new storm season approaches, nobody can predict what will happen and what the consequences will be of what is in the Gulf. I personally think it was a mistake not to allow oil to rise to the top, be skimmed by skimmers that are part of the international oil community. We did not avail ourselves very effectively of that. So the longer-term effects of correcting it and trying to keep oil from rising to the top may be, as many people discern, a longer—a bigger problem. The fact that there is no solution that would allow a wellhead to be covered and oil to be recovered at the top to me makes no sense.

As clear as it is that BP and its partners did not act responsibly, the Government of the United States has also failed in some of its responsibilities. So I guess the final question is, at what point in this process should the average citizen or business feel like we are moving toward a just conclusion?

Thank you for your time.

[The prepared statement of Mr. Gilchrist follows:]

July 11, 2011

To: Senate Committee on Small Business Entrepreneurship

One concern of coastal communities relating to the disastrous BP oil spill is that continuing poor stewardship by governmental entities in the planning and protection of our society has been a disappointment to most Americans. Also the news media in America blatantly exaggerated some of the damages and should at least morally, bear some of the blame.

BP and the other companies involved have created a resolution process that has helped many people recover losses and move on. There also have been abuses in the claim process by some. It seems true however that many businesses and individuals have not been able to resolve legitimate BP claims. That should not be acceptable!

I believe my business is representative of most in the Perdido Key, Orange Beach, and Gulf Shores area. We all were in a recovery phase from Hurricane Ivan in 2004. Our income analysis projected 10-15% growth for 2010 and 2011. We were up over 15% in the first four months of 2010. After April our gross income was down 15%. In the current year our income for 2011 is recovering but still up only 6 to 8% over 2009, about 15% under the trend lines. Since most net income comes from the last 20-30 % of gross income, we have all been severely effected. Our real estate, construction,

and recreation communities were, and are, struggling with the after effects of the spill, adding to current economic challenges.

I would propose that an independent ombudsman organization should be formed immediately to assist in resolving claims that have not been resolved by Mr. Feinburg's efforts. A truly independent review of disputed claims could only help. I also believe that a five year program of assistance to the most affected areas would more truly "make our communities whole."

As a new storm season approaches who can predict what may happen to our shores because of a storm event ? What will be the long term environmental consequences to the Gulf ?

As clear as it is that BP and it's partners did not act responsibly, the government of the United States also has failed it's responsibility.

Finally at what point in this process should the average person or business feel that a just solution is in sight?

Senator RUBIO. Thank you.  
Mr. Merrill.

**STATEMENT OF COLLIER MERRILL, CHAIRMAN, PENSACOLA  
CHAMBER OF COMMERCE**

Mr. MERRILL. Thank you, Senator Rubio, and I, too, want to echo I appreciate you being here. I know it is unusual to have a Senate hearing outside of Washington, but we appreciate you coming down and doing that and we certainly appreciate Commissioner Putnam being here.

I am going to jump right in with what Mr. Gilchrist ended with, on the efforts that happened after the spill. A year ago today, we were still having two million gallons of oil pump into our gulf every day and it was disheartening not to know where that end was. Every day, two million gallons was going into there, and you touched on it, Senator, at the beginning, of how many barrels were going, total barrels, five million barrels. But it came down to two million gallons every day, and it went on for 85 days.

And there has got to be a way to stop that, whether we have a—put a billion or two billion into some kind of recovery vessel that is parked somewhere and takes even a week to get there. It is better than sitting every day, day after day, and you see those—when BP finally released the videos a month into it of the oil spewing out of the bottom of the gulf. And that was such a damper to people, as I had workers quit and leave, not knowing when it is going to end, and we have to go home at night and just watch it continue to spew, and with no recovery planned. They are going to drill this well down and release pressure or do whatever.

So I want to echo what Mr. Gilchrist said. If nothing else comes out of this going into the record of trying to enforce, there is a lot of oil wells out there across the world and nation, to put some kind of fund, that they have some kind of recovery vessel. I have paid a lot of money over the years, taxes, for fire trucks. I have never used one. Thank God, I have not. But they are out there and they are ready to go should something happen, and we need to have some kind of recovery vessel, I would believe, for offshore, as Mr. Gilchrist talked about, that can come out there, and I do not know what they do—I am certainly not a scientist—that can do something. For that kind of money, somebody could build a ship that could go down and cover that until the oil was—relief oil well was drilled and release the pressure or whatever, but somehow to funnel that oil back to the surface and be able to pick it up, build the ship, whatever is out there.

Like I said, I am not a scientist and we will leave that to people that are, but hopefully, so that the next time something like this happens, and I think it is just going to have to happen—at some point, it will—there is something there besides we are trying a test well that hopefully will relieve the pressure, as we just sat over here in the Panhandle and day by day watched two million gallons a day, every day, spill into there.

Second, and everybody has touched upon it on this panel and the earlier panel, on the fine money, and I, too, want to thank Senator Gates and our delegation for leading the effort, getting this Oil Recovery Act passed. We are in a tough time here in the State of Flor-

ida, and to get \$10 million a year was no small feat and I appreciate it, and it is \$10 million a year this year, next year, and the year after. So we have got \$30 million that we are going to help diversify our economy with.

Then I heard you, Senator Rubio, ask Commissioner Putnam about, what are we going to do with this money? Where is it going to go? You know, we have already got a plan in place that was passed with this bill, as you said, on the 75 percent of the fine money will also go to the eight counties affected by oil. And we ask you, Senator, to try to make that happen at the Fed level, as well, as money comes in. That is where it needs to go.

The plan as it stands now, and it is still in the works, of exactly what this \$10 million will go to, and hopefully the fine money will follow suit, is kind of what was said earlier, you know, the project. The money will follow the projects. And the money right now is going to be administered through the Governor's office, come to the University of West Florida through the Haas Center, and Dr. Rick Harper and his staff there will be in charge of vetting these projects out as the Governor and his department—Grace Wupu is running that, will be here in a couple weeks and continue to work on how exactly that system will work.

But there will be procedures in place, and as Senator Gates very eloquently said, if there is a lot of infighting here in these eight counties, he will march down to the Senate floor and take the money back, and he will. So hopefully that process will be in place. It will knock out any infighting, and it will be what is best for the eight counties and not individual counties or cities or anything else. And we are excited about that.

Senator, in the previous Administration, some of the money that came in early, last year, was sent to other parts of the state. Some marketing money came in. There was an ad that came out somewhere in South Florida, it had somebody covered in lotion and it said, "The only oil on our beach is suntan oil," and it was just a direct market against Pensacola, and that happens. Cities market against each other, but there is a good chance that that ad was paid for by BP money, because that money that was supposed to come up to us was sent to other parts of the state and it is just wrong. It was wrong. Twenty-five million came in early and it was not handled correctly up to the eight counties that actually were affected by oil. And I heard you say loud and clear, I heard Commissioner Putnam, and I appreciate your efforts on that, that the money that comes in is spent to the places that need that.

And the last thing I want to touch on briefly is what has also been said here is the accountability of BP needs some teeth behind it somewhere, because we continue to hear, and I am not speaking on behalf of the Chamber or anybody else, but just from what I hear out there is that they continue to tell the same story, well, you are going to hear something in 60 days. You are going to hear something in 90 days. And those things come and go and, well, we did not hear anything. Maybe later.

The last time—I speak from personal experience—that we were going to hear something in February, and then in February, they said, okay, you need to redo all your claims, and we had several different organizations that had claims in. Redo your claims and

then in 90 days, this new system we have now—90 days from now. I know you are not happy because you waited since last September, but now redo them all and in 90 days, we are going to have the fix. That is 140 days ago, and nothing.

If you could at least have somebody to talk to and say, well, this is where you are and we need these questions answered, but it is under review, it is under review. Can you give me somebody to talk to? There is nobody ever to talk to.

And I heard Mr. Feinberg say, “Well, we were just overwhelmed by so many claims,” and we started hearing that a year ago, how many claims they are overwhelmed by. Well, hire more people. You know, we told him that last year. We told him that in December. We told him at the February meeting when he said he is still overwhelmed by the number of claims that have come in.

After Katrina, 1,600,000 people filed claims with their insurance companies. They hired 15,000 adjustors and they came out and knocked out 98 percent of those claims in a year. You know, that is what you have got to do, and they come in and they—nobody wants a hurricane, and everybody is not exactly happy with the insurance companies, but they come up with a settlement, they do it, and they get on with their lives. As Mr. Gilchrist said, this just continues to linger and linger and linger.

I want to end with, once again, we appreciate you being here and I am here for questions. Thank you.

[The prepared statement of Mr. Merrill follows:]

**MERRILL LAND COMPANY**

P.O. Box 710  
Pensacola, FL 32591-0710

850.438.0955

850.438.2620  
(Facsimile)

July 7, 2011

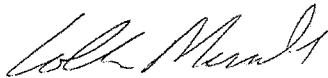
United States Senate  
Committee of Small Business & Entrepreneurship  
Committee's Hearing Clerk  
Washington, DC 20510-6350  
c/o Monisha Smith

Dear Monisha Smith,

I am writing in response to Mary Landrieu's letter inviting me to testify at an upcoming hearing titled, "A Year After the Deepwater Horizon Oil Spill: The Status of Recovery Efforts In Florida." I have enclosed a short biography and statement as requested.

If you have any questions or require additional information please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Collier Merrill". The signature is fluid and cursive, with the first name "Collier" written in a larger, more prominent script than the last name "Merrill".

Collier Merrill



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850.438.0955

850.438.2620  
(Facsimile)

July 7, 2011

United States Senate  
Committee of Small Business & Entrepreneurship  
Washington, DC 20510-6350

Re: Deepwater Horizon Oil Spill

Dear United States Senate,

I have provided a synopsis of my statement to the Senate Committee on Monday, July 11, 2011.

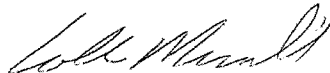
BP must be held accountable for making timely payments. They continue to miss deadline after deadline with no repercussions. BP's explanation is that they are overwhelmed by the number of claims submitted; however, they have had ample time to hire additional staff for processing. For example 1.6 million claims were submitted in Mississippi and Louisiana following Hurricane Katrina, 93% of those claims were handled in the first year. The significant difference is that the insurance companies handling Hurricane Katrina hired over 15,000 adjusters to accommodate the demand. BP has taken no such actions to adjust to the overwhelming demand.

The State of Florida passed the Oil Spill Economic Recovery Act a bill to diversify our economy by providing us with \$10 million a year for the next 3 years and also direct 75% of any additional fine money to the effected counties.

The federal government must help ensure the fine money received is used to aid the counties that had oil on their beaches.

Thanks for your time and attention on this matter. If you have any questions or require any additional information please do not hesitate to contact my office.

Sincerely,



Collier Merrill

**J. Collier Merrill**

Mr. Merrill is the President of Merrill Land Company, a real estate development company, which specializes in condominium development along the Northwestern Gulf Coast. He is also the president of the Great Southern Restaurant Group, Inc., which owns and operates three restaurants; The Fish House, The Atlas Oyster House, and Jackson's Steakhouse. Mr. Merrill is a graduate of the University of West Florida with a Bachelor of Science degree in Business Management.

Merrill is an active participant in the community, currently serving on the board of trustees for the University of West Florida and the Naval Aviation Museum Foundation. He serves on the board of directors of the Sacred Heart Health System and the West Florida Historic Preservation Board. Merrill is chairman of the Community Maritime Park Associates, Pensacola-Escambia County Promotion and Development Commission, and the chairman of the Pensacola Bay Area Chamber of Commerce. He is also chairman of the Tocqueville Society for United Way, a trustee emeritus of the Pensacola Museum of Art, a member of Christ Church, and a member of the Pensacola Downtown Rotary Club.

Previously, Merrill has served in a number of community leadership roles; chairman of the board of trustees for University of West Florida, chairman of the Legislative Affairs Committee for the Florida Board of Regents, chairman of the Florida Arts Council, and president of the Pensacola Museum of Art. He has also served as a member of the boards of the Pensacola Junior College Foundation, Catholic Social Services, and the Pensacola Chapter of the American Red Cross.

In addition Merrill served as a member of Leadership Florida/Florida Chamber of Commerce, he is also a past president and chairman of economic development for the Home Builders Association of Northwest Florida and served as a mentor for Big Brothers/Big Sisters.

Merrill has been recognized and named Art Education Hero by the Florida Cultural Alliance, an Outstanding Volunteer Fundraiser by the National Society of Fund Raising Professional, and a Paul Harris Fellow of Rotary International, named the University of West Florida's Distinguished Alumni of the Year. In addition, Merrill was a past recipient of the Pensacola Area Chamber of Commerce's awards for Emerging Community Leader and Community Leader.

Senator RUBIO. Thank you.

I think before we have further questions, and it is kind of not in the script, but I would like the two members that are here from the legislative delegation to provide their brief input. I do not know how we can do that. We have a microphone here if you guys want to share it, and maybe get an extra chair because we talked so much about the Oil Spill Recovery Act a little bit here early on, so I am interested in how that played out in terms of the view on the \$10 million the state is putting forward.

One of the things, A, I think if there are some projects that are already in mind and the \$10 million acts as seed money to that, that we can make sure that there are not redundancies. On the other hand—I guess what I am trying to say is I want to make sure that whatever we do at the Federal level complements the intent of the state legislation, not contradicts it or in some ways duplicates it in an unnecessary way. So thank you for being a part of this, both of you. You both entered the same year, did you not, so I do not even know who is senior. Who wants to go first?

Mr. INGRAM. He is better looking. I will let him go first.

[Laughter.]

**STATEMENT OF HON. DOUGLAS V. BROXSON, A REPRESENTATIVE IN THE FLORIDA HOUSE OF REPRESENTATIVES**

Mr. BROXSON. Senator, thank you very much for being here. Our delegation has taken a fairly active position in dealing with the Gulf Coast Claims Facility, and first of all, I want to applaud BP for stepping up and offering the gulf coast \$20 billion. I think they were on a guidpath to pay families and businesses for their loss. However, it is our strong opinion when they retained Mr. Ken Feinberg to administer the Gulf Coast Claims Facility, he created a network of rules and regulations that virtually shut down the process.

To date, BP has paid about \$4 billion of the \$16 billion. Last year, they wrote off \$38 billion in losses, considering the anticipated payout they have not made. And what we would like to see is that the remaining \$16 billion go to a new claims network of the states and counties represented by the oil spill to filter this money back to the citizens and businesses of the area. And I would pray that you do not allow this money to go back into the coffers of BP, that this money that they promised us, that should have been paid out, was not paid out, and we expect them to fulfill their obligation to the gulf coast.

**STATEMENT OF HON. CLAY INGRAM, A REPRESENTATIVE IN THE FLORIDA HOUSE OF REPRESENTATIVES**

Mr. INGRAM. Thank you, Representative.

And then, Senator, thank you so much for coming here and bringing the spotlight of Washington here on this problem. It means a whole lot to me and I know the rest of the delegation.

There is not a whole lot more I can add than what you have heard directly from the folks that were affected the most, but a few things I would like to echo.

First of all, from the delegation's standpoint and State government's standpoint, we did, I think, what we could do with the Oil

Spill Recovery Act. I think it was a step in the right direction and the right thing to do. It had support from home, and then the Governor's office helped. Senator Gates spearheaded the effort, and I think it was great that we could do that from the standpoint of State government.

The other two things I would like to echo, and this piggybacks on what Joe Gilchrist said, is I hope that as you take this back to Washington, the Federal Government looks at the nuts and bolts of what happened and can be prepared from the emergency standpoint. I know Collier alluded to that, too, comparing this to lessons we learned from other disasters, hurricanes and things like that. After some of the hurricanes, President Bush, I know, waived the Davis-Bacon requirements to allow things to be rebuilt faster. Maybe at the Federal level the next time—knock on wood, we hope this never happens again—but being able to waive portions of the Jones Act to allow foreign vessels to come and aid in cleanup and making things go faster. If we can look at those nuts and bolts things we can do to make cleanup happen a lot faster and prevent oil from getting to the shores, I think that would be tremendous.

And the other aspect, and Representative Broxson alluded to this, is that the folks who were affected the most, you know, the fishing boat owners, business owners like these guys sitting here at the table, if they are not paid by the Federal Administrator, for some of these folks, it is too late if they do not have the money in their hand. They have already been foreclosed on. They cannot eat. Their kids are going without. So from the standpoint of being a United States Senator and being able to maybe put pressure on the Administrator to make those payouts now, because I think there becomes a point where it is just too late. If you have been foreclosed on or you cannot feed your family, the promise of getting a payout down the road does not matter. So for some of these folks, it is too late, but whatever we can do from this point forward to put that pressure on the Federal Administrator, I think is very important.

So thank you.

Senator RUBIO. Well, let us—here are some questions that I have, and I want to break it up into two parts. I mean, let us close the loop on the claims process because it is still a very sore subject for obvious reasons.

My perception, based on what I have heard in the past before coming here today, is that the problem is the process itself. It takes too long and no one is given a reason—there is no clear understanding as to why it is taking long. Collier, you talked about recently where people had submitted claims, had filled out the paperwork, and then were told, we have created a new form and a new process. Fill out this form and that will be done. It will be faster and move quicker than the other one did. They have done that. They are still waiting.

Is it—and I do not know. In your mind, what is the biggest problem? Is it just a time frame, the length of time that it is taking to pay the claims? Is it a combination of that and some of the people that have been denied, some of the rationales behind the denials do not make sense? What would you identify as the two or three real sore points with regard to the existing claims process?

Mr. INGRAM. The thing we hear a lot is that there is fraud in the system, and I am sure there is, that people try to make——

Senator RUBIO. I am sorry, that you hear a lot——

Mr. INGRAM. From BP.

Senator RUBIO. Oh, from BP. I beg your pardon.

Mr. INGRAM. Collier may be better able to answer that, or——

Unidentified Speaker. About the fraud allegations, you mean?

Unidentified Speaker. Payouts from [indiscernible], I guess. I mean, I guess what they are on the lookout for are the fraudulent claims, and that is a legitimate concern——

Senator RUBIO. Right.

Unidentified speaker [continuing]. No doubt about it, but to allow that to hold up all payouts, or most legitimate payouts, I think is probably something that ought to be looked at.

Mr. BROXSON. I think Collier mentioned that we are equipped to handle major storms and companies bring in a massive amount of adjusters. The thing that you have there is you have a contract. They know what they are supposed to do. The reality is, the problem with the Gulf Coast Claims Facility is that there is no contract. One person goes in with one set of circumstances and gets paid. Another person goes in with the same circumstances and does not get paid.

If there was a ground of understanding of what their expectations were, this would help. I have spoken to Mr. Feinberg two or three times and encouraged him to do that, also to have someone from the Department of Insurance here in Florida to shadow his procedure to see that people are being paid properly and fairly. In some cases, they were paid unfairly. The concept of paying out \$25,000 to a business, if that business received \$10 in compensation that they justified, they are entitled to \$25,000. But a business that has a \$1 million loss of income is still entitled to \$25,000. That makes absolutely no sense.

But, frankly, I do not think there is any salvation for Mr. Feinberg and the GCCF. I believe we have to create a new entity, and the \$14 billion that is left should be reinvested back into the five States that were impacted. And Florida, which we are not an oil producing State, we need our proportionate share that 19 million people bring to the table.

Senator RUBIO. In terms of the—one of the things I am interested in about the claims payments, those are not tax-exempt, correct? If a claimant receives payment, they pay taxes on that money, is that correct?

Mr. BROXSON. That is correct, both those individuals and businesses.

Senator RUBIO. Right. So I would imagine I know the answer to this. This is what they call a leading question. Would it be helpful if those claimants were tax exempt?

Mr. ZALES. If I could, and in the last Congress, we tried to get a bill through Congress to make the payments from not only that, but the emergency payments that started right after the spill through the claims and final payments, to have them tax exempt, and we were unsuccessful in doing that because of all the issues that you are well aware of.

Senator RUBIO. The revenue adjusted——

Mr. ZALES. Right, and—but it would be a tremendous help if something like that could come across and then, you know, you can make it retroactive to last year and the payments that people have made on their taxes, which in many cases the money that they received which got them through the year, they had to pay back to the Federal Government, and so they are right back at square one. So that would be a tremendous help, if something like that could happen.

Senator RUBIO. I think that—let us move beyond that. It is pretty clear, and I think your statement, you all—there are some people that have been helped by the claims process. They have gotten their money, obviously not in a tax-exempt way, and they have moved on. There are many others that have had denials. They have gone in and basically there are two claims that are virtually identical or very similar. One gets paid. One does not. There is no rational explanation for it. Some people are waiting forever with no clear explanation as to why it has taken so long to pay them. It sounds like it is a combination of no clear, at least in the minds of those here, from the testimony here today, no clear parameters as to how they are making these decisions. It also sounds like potentially it is a manpower issue. Have they hired enough processors on the claims?

Mr. MERRILL. I do not know how many they have hired. Representative Broxson might know. He tried to pay a visit at their office one time and did not find a lot of people working, and I will defer to him on how many people they have hired. But what we hear is, “We are overwhelmed by the number of claims,” and I get that. So hire more people. You know, we heard that back in August a year ago, back in July a year ago, and then in August, September, and we just continue on. Then hire more people.

And then, as Representative Broxson and Representative Ingram said, they would come up with these different formulas. All right. We are going to start over. We are going to start over. So we bought into that a couple of times. Now, here we are. We were going to start over in February and we are going to have 90 days. “We hate telling you that again because we know you have been waiting,” is what their response was. Maybe 60, but by 90, you are good. Well, that was, for me personally, it was 142 days ago that they received my claim, verified they received my claim, on several different businesses, and we just cannot tell you what is going on. We do not know.

So I will defer to Representative Broxson on the number of employees they have.

Mr. BROXSON. Well, originally, they had 3,500, and they had—they went—and I do not want to be a complainer, because it is really over, but they promised those jobs would be on the Gulf coast. They were in Ohio, Virginia, and Washington, the State of Washington.

Senator Rubio, I do want to tell you this. I admire you for being here. I think it is a great step. However, no matter what you do or what any other Senator or Governor or Representative has done, the process and Mr. Feinberg have total immunity from our criticism. He will tell you, and he probably has told you, that his boss is the President of the United States and that when he complains,

he will listen. That is a pretty high hurdle to get over when you are trying to deal with someone to get them to adjust to a procedure. That is why I believe that we have to move on beyond that process and establish a new one to administer the balance of that money.

One of the Justice Department attorneys of the Southeast did say that he did not think it was fair for that money to go back into the coffers of BP, and I would strongly pray that you do not allow that to happen. I mean, they, in fact, have taken the tax advantage for spending that money that they did not spend. So whatever influence you can levy from the Congress would be a great help to us to——

Senator RUBIO. Just to be clear, your concern is that BP after a while will say, “We reviewed all the claims that are worthy and we still have money. It did not add up to the total amount of money we had set aside, and so we are going to reclaim this money back into our coffers.”

Mr. BROXSON. Exactly.

Senator RUBIO. Okay. Well, we are going to—all of this testimony here is on the record and we will, as we move forward, we are going to talk to some of the other Senators involved on these issues and figure out how we can try to influence Mr. Feinberg’s boss, and we have some ideas and we will—yes, I am sorry, Captain.

Mr. ZALES. If I could add, because I am one of the people, I have had a final claim in since February, and as far as I can see on the Internet, it is still under review. But there are a lot of people in this same situation, and I was a member of Governor Crist’s Economic Recovery Task Force and Mr. Feinberg came to us several times. I am glad to hear finally he has a boss, because he told us at every meeting he did not have one. He was completely independent, like he was king, which is essentially how he plays.

So, clearly, some kind of oversight needs to be put there because there is absolutely no transparency in the process at all. You cannot find anything out about your claim from anybody. It is—I do not—it is worse than pulling hen’s teeth. So that is the process that everybody is in, and there is no rhyme or reason to it. It is like somebody else said here. One person can go in—you can have two identical sets of records. One person can go in, they come out and they are taken care of. The other person will go in and they do not get anything at all. There is no standard to the process.

Senator RUBIO. Well, again, and I do not want to put something—I am not committing to something, because I have not thought about it, we have not thought about all the implications, I have not talked to anybody about this yet, but one of the things we can consider is whether, if a bill moves forward, as I anticipate it will, with regards to the fines under the Clean Water Act, whether this claims process will be pulled into that legislation and somehow some mechanism be made a part of that legislation that helps close out the rest of these cases that are out there and prevents exactly what it is you are concerned about, which is the money being reabsorbed by the company.

And again, that is not something I have talked to anybody about. It is just a spur of the moment thought based on the testimony I have heard here today and how perhaps this bill could act as a ve-

hicle to try to address these things and define, moving forward, how we are going to close out this process a year and whatever after it has already happened.

So let us move on to the Clean Water Act, and I will explain to you, frankly, what some of my concerns are. There are a couple of hurdles to be overcome in a bill in Washington to take this fine money and assign it to the States.

The first is kind of a philosophical/ideological argument by some that this money should not be assigned but rather should be absorbed into the General Treasury of the United States. I am not sure that is a majority position, but I think there are some that will have that position and there will be a debate about that. In what form and in what set-up, I am not sure, but there will be a debate among some that will argue that it is not right for this money to be assigned to a special fund, but rather that the money should go the way the money would normally go, and that is the General Treasury of the United States.

So I think it is critically important that the Gulf states are united in presenting a united front on why it is important this money be assigned, and the argument is this is not general revenue. This is not the money that is normally collected. This is money that is being collected because of a specific incident. It is a fine related to a specific incident that occurred, and, therefore, the funds from that specific incident should go toward the damage caused by that specific incident and to prevent such incidents from happening in the future. That would be our argument. Others will argue differently. So we need to be careful about that.

The second danger is that this huge pot of money is going to be sitting out there, and I assure you that there are those who already have designs on it, including those who are far removed from the spill. There are Senators and Congressmen from all over the country that see this as an opportunity to fund something they have had their eye on for a very long time, a condition of their vote, unfortunately—and I say this—let me rephrase that. And a condition of their vote may be that somehow this money, that a portion of that money be made available to them, to their state, to their project, even though it is far from home.

And the reason why I put that at the table is because looking three steps ahead, you can very quickly find yourself in a situation where our choice may be a bill that has most of its money to the Gulf region but has other areas of the country picking at it, getting their piece of the money, because otherwise they are not going to let the bill move forward, or no bill at all. And I lay that on the table because there is no way we are going to avoid that debate. There is just too much money sitting out there for it not to be attractive, like a shiny object.

So I want to lay that out there because that conversation, at some point, could happen, where we are going to have—we may have to make a decision about whether we do not vote for this thing at all because we think it is wrong that money that comes from a BP oil spill in the Gulf is going to fund some project on a lake, you know, 1,500 miles away that had nothing to do with the oil spill, or worse, going to fund some new airport somewhere else in the country.



I know this may sound nonsensical to you. I have been in Washington six months. I am learning. These things happen, unfortunately. So I want to lay that on the table because I do think that you may hear about that, that it may happen. And I am not committing one way or the other, other than to tell you that it is disturbing to think that we may have to vote for a bill that would have that kind of stuff in it when it goes against all of our principles and where we think that 100 percent of this money is the result of the BP oil spill, 100 percent of the money should go toward that.

Now, that being said, I want to explore a little bit more how—what kind of projects we should be funding, because I think that is going to be an important part of how this bill gets put together, and what I heard today, moving forward, are three different directions for the money to be spent. And I think I heard arguments from most of the testimony here today, and we are going to open it up to the public, but in favor of a combination of all three.

The first is ecological concerns. There is a bunch of oil that is still missing. Where is it? What does it mean moving forward? How can we restore some of these reefs, particularly the artificial reefs, so that they are productive and attract people here? So I think that is the first part of it.

I think there is a consensus that there be some ecological spending. Again, there was an editorial this morning, I believe, in the Pensacola News Journal that said most, if not all, of the money should be spent on ecological programs, that enough has been spent on the economics. I think that is a debate that will be had, and depending on where you fall on these environmental issues, there are some that are going to argue for more money for preservation-type and conservation-type projects. But I think there is a consensus that at least some significant portion should be on ecological concerns and things of that nature.

The other is research, research about things like how to be prepared and prevent future spills, but also research on things like fisheries. One of the things we kept hearing about from the fishermen is how poor the data is, and yet some devastating decisions on catch limits are made based on this poor data. And I know Senator Nelson, for example, has worked very hard on securing funding as part of this for better data, so that if someone is going to come in and say, you cannot catch any more after X-date, it is not just because some guy decides some computer model told him this, but, in fact, it is based on some real research that is based on some real facts and that you are not destroying people's livelihoods based on an educated guess, but rather on data that actually has some substance.

And then the last part that we have heard is some economic investments, obviously things like promotion, promotional-type things, because so much of the problem that we are facing in the region is directly related to perception, whether it is perception about the safety of the seafood or maybe ongoing perception about the quality of the beach and the water. There is a perception issue out there that needs to be overcome.

The sad truth is that last year, a lot of people canceled their vacations, a fishing trip or a stay on the beach, and went somewhere

else, and maybe they really liked it and they went back again this year. In essence, they have started establishing a new tradition. If I am wrong, you are going to correct me, but just knowing human behavior, you go to the same—you make a family tradition of going to northwest Florida year after year for the summer, but one year, you cannot go. You have to go somewhere else and you end up liking it and all of a sudden you have got a new family tradition going, and so we have got to reverse that. And one of the ways you reverse that is through promotion of the region.

And then, obviously, the possibility of some diversification. Maybe this is an opportunity to provide some stability moving forward by finding some new economic activities and from this bad thing something good can come, in essence, the birth of a new industry.

That is my sense of kind of the testimony I have gotten today. I am not sure I touched all the bases or got them all right, but it sounds to me like the two things that we are focused on are, one, the BP claims process that is ongoing and how we can get that closed out, which is basically what everybody wants. Let us get this closed out. And number two is moving forward, what to do with this money if and when it comes, gearing it toward these kinds of projects, ecological restoration, research on prevention, and other things like the fish catch limits, et cetera, and, of course, investments in our future.

Is there anything the panel would like to add to that in terms of how I have summarized it? I may have missed something or maybe misstated it.

Mr. ZALES. You are very perceptive. I think you hit the nail on the head with all of it. In the fishery research part of it, I would encourage a substantial amount to go toward fish research for the Gulf. Dr. Steve Murawski used to be with the National Marine Fisheries Service. In a meeting with him about two months ago about some research they were doing, he made the statement that if red snapper was in the Bearing Sea, we would not have a problem with red snapper because of all the money prior to the time you got to the Senate that used to come to the State of Alaska and the northwest Pacific. They do yearly stock assessments on their fish. They have an abundance of data that is there. And so their fish are—the data on them is relatively good and they do not have the problems that we have here.

And so it is like I said in my statement. Generally, stock assessments here happen every five to seven years in the Gulf. Forty percent of the recreational fishery in the United States is in the State of Florida. That is substantial. And so we do not get near the funding out of Washington for that type of activity that we deserve because of the effort that is put here. And so anything that can be done along that line would be very well liked.

Mr. GILCHRIST. Senator, the only thing I would say is that it appears clear to me that there have been plenty of tools available to government entities to work with and solve these problems and plan ahead. The ineptitude of governmental entities cannot be understated, in my opinion.

[Laughter.]

Senator RUBIO. You will find no disagreement.

Do you want to add something, Collier?

Mr. MERRILL. Only, Senator, on the first two, ecological and research, that is certainly a component. You did mention research on how to prevent that. Hopefully, we will not use our fine money doing that. I mean, the people that are drilling should be working on that themselves, and they should—

Senator RUBIO. I apologize. What I meant by prevention is preventing the bad response that existed. I heard—I think you commented on, and I thought it was a good analogy, you have been paying for fire trucks all these years, but what I meant to state was if we never want to see this kind of late response again, in essence, if this were to ever happen, God forbid, in the future, we want to make sure that we have in place the technologies and the mechanisms to prevent the spill from getting out of control the way this one did, some way to address it.

Mr. MERRILL. Yes, sir, and I think the oil companies need to pitch in to some fund. As I was referring to, I pay taxes to buy fire trucks, and they are ready there if we need them. The oil companies need to pitch in, I do not know how, whatever, to come up with some kind of emergency vessel, whatever it is. A couple billion dollars, you can come up with something to surround this oil spill until they—then they can spend 82 days drilling a well like they did this last time, but at least two million gallons are not coming up on our beaches at that point. So I appreciate that clarification.

And ecological, I will not touch on, but the economic investments, yes, we do need to diversify and that is what we are talking about, what we are going to do with the \$10 million a year for three years, and as the fine money comes up here, as well, we can put it through that same pattern of qualifications and preventing and fighting and trust you to get as much of it down here as you can.

Mr. BROXSON. Senator, I think your big battle is time. The longer it goes before you have a resolution in Washington, your battle is going to be dealing with the memory of the oil spill. If something does not happen this year, your battle will be greater next year because this money will filter away. BP spent over \$200 million telling the nation that we had recovered and we were back to normal, and this would be the battle you will have with your colleagues, to convince them that we deserve to have money come back here when the economy has completely, in the minds of the public, been put back the way it was prior to the oil spill.

Senator RUBIO. Well, just as an update on that, let me state that I am pleased by the unity and progress that has been made by numerous members that have been working on this. Senator Landrieu has taken the lead, along with Senator Vitter, Senator Shelby, Senator Nelson, myself. All the gulf State Senators, for the most part, have been working well together. Now it becomes the bigger battle, and that is going to the rest of our colleagues and encouraging them to be a part of this process. In an ideal world, this bill would be written the way the Gulf state Senators want it and spent that way. My sense is that it will probably develop differently. Nothing in Washington moves very quickly, certainly not in the Senate, which takes great pride in taking a long time to do everything. But I am just learning it as I go.

I think there is real unity behind the Senators in the region. I think outside of it, it has yet to be seen how it all plays out, including the positions I have outlined. There are some who are going to argue that this money should go to the General Treasury of the United States, that it should not be assigned and directed in this way, and others that argue differently, and then yet others that see this as a big pot of money that maybe they can dip their beak a little bit in and get some for themselves and their States. So we will figure out how this all plays out. It should be interesting.

I wanted to—unless there were any other comments from the panel, I wanted to—I know we have a—what are we going to do with the roving microphone? So we have about 40 minutes, and what I would like to do is take any public input that may be out there. I know we have a lot of folks that are attending and have some thoughts. I would encourage you, if you have a question, there is a question. If you have a statement, make your statement. If you have both, that is fine, as well. Be considerate of the other folks who are waiting who may have something that they want to add, as well, in the next 40 minutes. And, obviously, thank you for being a part of this.

Who wants to go first?

Mr. DIXON. My name is John Dixon [phonetic], Port St. Joe, Florida. I would like to thank Senator Rubio and everyone for organizing this. It does seem like this bill has sort of fallen out of the national limelight and I appreciate your helping to bring the light back on it.

The way I read this and the way I see it, Thursday, last week, July 7, BP basically declared war, in a sense, on Florida tourism. The comments that they provided to the Gulf Coast Claims Facility (GCCF) attempts to use the Oil Pollution Act (OPA) '90 as that geography and causation is reason not to pay those claims. The original saying BP had was "BP will pay all legitimate claims." They have now changed that as of last Thursday and it says, "BP remains committed to paying all legitimate claims under OPA."

So we have a corporation—the Alaska pipeline, the Texas City oil refinery explosions, the Gulf of Mexico—had a corporate culture that seemed to put profits above human life, safety, and the environment, and we thought maybe what happened in the Gulf was a moment for them to turn their corporate culture around. They met with the President and put money into the fund and it seemed like, okay, they understand now. They get it. People, safety, and environment should be before profits.

Last Thursday, it looks like that progress was lost and they are now back to profits before people, safety, and the environment. OPA '90 is Federal legislation that in no way should be used to not allow Florida tourist business to recover from the claims. So I would hope, I guess—my prayer is that, Senator Rubio, you could go back and perhaps whatever loophole BP is trying to use in OPA '90 to not pay Florida tourists is closed, very clearly.

Senator RUBIO. We talked about that briefly yesterday, and that is a new development as of last Thursday, I believe, right? So we are going to—that is now part of the committee's record and we will delve into that issue as soon as we return to Washington tonight.

Male speaker. Thank you for coming to our great town of Pensacola. I was up and visited your office last week and got to meet with Miss Sarah and we had some issues about what we are still uncovering in the Gulf of Mexico, and this is one of my largest concerns.

As of today, as a commercial fisherman—I have been a lifelong commercial fisherman, ever since I was 16 years old—they have not cut our quotas and we are catching fish. But it is like coming into your home and somebody has been there. Things are out of place. Things are not normal. We are seeing some disturbing things that we see as a lifelong commercial fisherman.

I was brought up on the beach. I played in these waters as a six-year-old kid. My mom used to light the lighthouse at Pensacola Beach before the Navy Yard told them they had to leave and move to another place.

So my biggest concern is BP packing up and leaving before we can prove our losses. As Mr. Zales asked for stock assessments and money, what if our fishery collapse in two years, as it did in Alaska? Where am I left then if BP goes, “Okay, I am going to pay everybody off what you have lost today,” and I am not saying BP owes me a bunch of money or anything at this time. Dr. James Cowan just last week did a study saying he found lots and lots of dead natural breeds, and these things are emerging daily.

It is just hard for me to watch BP get on the horse and take off before we realize the consequences of the spill in the long term. Yes, my catch register does not ring every day like some people it does on the beach, and thank you for coming to our great home town.

Senator RUBIO. Just to restate here, because I think it is actually a very valid point and I think we heard it earlier in the testimony—I think Mr. Gilchrist talked about this, as well—is we do not yet—I think the argument is, while we are glad the oil is not spewing and we are glad that you do not see it on the surface and we are glad that people are coming back and fishing is going on and this, that, and the other, we are concerned that there is a bunch of oil that is still unaccounted for, and more importantly, we are concerned that the impacts of the spill is not something that may be fully felt for years to come.

And what you are saying is, what happens if two or three years down the road, all of a sudden, we wake up and realize, my goodness, we are dealing with this new permeation of something that happened two or three years ago. There are plenty of precedents, by the way, out there for this happening. There are plenty of precedents for delayed impacts after a catastrophe or a cataclysmic event.

What happens if this impact is felt two or three years from now, but to everyone’s mind, it is ancient history and there is no money on the table to pay for it, and I think that is an issue that is going to have to be discussed within the context of the fine bill, because I think you have made a very valid point, and that is the full impact of the spill, particularly on those that depend on these waters, may not be known or felt for years to come. That is a very valid point.

Ms. ESSER. My name is Ruth Dupont Esser [phonetic]. I want to thank you, first of all, for being here today.

Senator RUBIO. Thank you for coming.

Ms. ESSER. This is clearly an environmental issue. I would like to ask if you would pay attention to EPA and its role in its contract with UNEP, United Nations Environmental Program, and please assure us that you will be watchful that the funds from BP do not go to EPA in order to commit to an agenda by UNEP, which is communistic in structure, so it is as anti-American as it gets. We need these funds to come to our free-market system, to the people that suffered from the consequences of this event, and we really need to be protected so that they do not go to an entity that does not intend to assist the American way of life.

I believe that we do need environmental clean-up. I do not by any means think that we do not. We clearly do. But we need to have the funds in the hands of the free-market system and in the hands of environmentalists who are not working in conjunction with the United Nations. Thank you.

Senator RUBIO. Thank you. And I have gotten several e-mails about this topic, and let me just say that I think the intention of everyone, I hope—there might be a debate about this in Washington, too, but the purpose of the fine bill is not to advance any ideological view, but rather to deal with the fact that a bunch of people have been hurt really bad by the negligence of an individual company. And the law says that when you do something like this, you pay a fine for it, and the argument now is how should that money be spent, and the money should not be spent, in my opinion, to do anything. I am not even talking specifically about what you outlined, but in general, should not be used to make a point behind any ideological philosophy. The point of this money, my hope is, will be to address the damage that was caused by the specific incident, and that is the direction I hope we will head.

Mr. VILLMER. My name is Matthew Villmer. I am an attorney over at Emmanuel Sheppard and Condon out of Pensacola. We represent about 60 different individuals and businesses in their claims with the Gulf Coast Claims Facility.

I just want to echo what the panel said today, that the biggest problem with the Gulf Coast Claims Facility is disparate treatment. So that would mean that different claimants with the exact same claims are treated differently. And I just wanted to figure out if your office can provide any assistance with shaping Feinberg's opinion or helping with individual claims that are treated differently underneath the Gulf Coast Claims Facility's rubric for compensation.

And as a perfect example, our firm represents five individuals who all worked for the exact same business and have the exact same position. Last year, we filed a claim on behalf of all five that were identical, from top to bottom, 200-page claim packets that were identical. Two were paid, three were not paid. We then turned around and filed this year interim and final claims that were, again, identical from top to bottom. Two were paid, three were not paid and finally denied. The GCCF's position is that the two that were paid were properly paid and the three that were not paid were properly denied, which makes absolutely no sense.

So if there is anything that your office can do to assist with individual claims in the GCCF claims process, I would like to know that.

Senator RUBIO. And other than what we do already, which is try to assist claimants who call us, but I think the process that you are outlining is—I think what we are learning, and increasingly being confirmed to us, is that the problem here is we have a flawed process, a process that has no uniformity. So two different people are viewing, for example, five claimants, as you have outlined—this is my guess, but it sounds like I am going to be right—five different people work in the same place and the exact same thing happened to them. But these five claims are reviewed by two separate people. Two claims are reviewed by one guy or gal and three claims are reviewed by somebody else, and the three get denied because that person has got a certain mindset and the other two get approved because the other person has a certain mindset, and that is the problem. It is a procedural problem that I think lingers.

So I think part of—one of the things that has come from this hearing is, whether it is the Clean Water Act fine bill or some other mechanism, I think we are going to have to figure out a way to close this process out. It cannot continue in this process where you have a bunch of people out there who feel like their claims have been denied and would like to appeal that decision. You have others that are waiting in a backlog. I think the process of closing out the claims is going to have to be a part of any discussion moving forward, and what I can commit to doing is making sure that that happens.

Yes, Collier, I am sorry.

Mr. MERRILL. I know there are—I see that I recognize, representatives in the audience from BP, so maybe they are taking the right notes and will do something, but do not hold your breath.

And I say that—you know, in February, the procedure, you know, we were complaining. There was a group there meeting with Mr. Feinberg and complaining and he said, “Well, I am hiring a group of law firms and each State is going to have some people representing that you can talk to,” because I said, we cannot talk to anybody. You do not know where your claims are. And I was trying to help some people. Fortunately, we are able to survive, but I have got employees and other small groups that were having trouble getting anywhere, and they said, well, these people, you can talk to. And that is when they told us, well, refile. It is going to be 90 days.

And so that came and went. I actually talked to this group here that is representing Florida on Thursday and I said, it has been 142 days. You said 90. What can you tell me? And they said, “Well, all I can tell you is your claim is under review.” So, I mean, it is the same thing that I would get from anybody else. I guess they do not have any authority, either. I do not know where we go from there, but it is—this frustration is what I hear every day when I walk around, just that you do not have any response. I was hoping that this latest development in February was going to work that, but it just has not. So I just wanted to echo that, as well.

Senator RUBIO. Janice.

Ms. GILLEY. Yes, Janice Gilley, University of West Florida. I think everybody else has said we are so glad that you came to Pensacola and would have this official hearing here.

I wanted to speak a little bit more about the way the funds might come back to the states. I definitely agree with the environmental research and continuing to monitor the impact. Obviously, economic diversification for the region. But I would hope that we would also consider endowing some of those funds, because once they are spent, they are gone forever. Obviously, as everyone else has said, God forbid we ever have this type of situation ever happen again. But I think that we do need to be good stewards of those funds if—if—and when they are made available to our region and they are endowed so that we can continue for the decades, monitor these situations and have resources or have an opportunity for resources to continue the research and the diversification.

Because my fear is that the funds may come, and, like you said, from a policy perspective, they are divided up nationally. If they are maybe somehow endowed, then you could only qualify for those funds if you are in the region, and it could potentially be in perpetuity. So that would be one of my concerns about the funds and maybe how they could be managed. I know that is a pipe dream, maybe, from D.C., but—

Senator RUBIO. No, no, it is not. It is a good suggestion. Have you worked in government before, Janice, or—

[Laughter.]

Mr. DIEP. Good morning, Senator.

Senator RUBIO. Good morning.

Mr. DIEP. My name is Lan Diep. I am an Equal Justice Works AmeriCorps Legal Fellow working at the Mississippi Center for Justice. We are part of a five-state consortium from Texas to Florida that provides free legal assistance for folks who want legal advice dealing with the oil spill and dealing with the GCCF.

In following the panel's discussion this morning about the GCCF, many of the issues raised, I feel, are important, but really have only scratched the surface. Our consortium has handled or in the process of handling about 3,000 or so claims. I, myself, have handled about 50 or so claims.

And I think in terms of small businesses—the list goes on and on, but in terms of small businesses, specific points of contention with the Claims Facility right now are their loss of income calculations. Small business claims get discounted by what Feinberg calls a loss of income percentage, and what that percentage says is basically because you are not selling as much, you do not have to buy as much inventory, so you are actually saving money. So your claim is discounted. And that percentage, as far as I can tell, is somewhat arbitrary.

People can provide specific numbers on their taxes, but then industry numbers are used. Very broad strokes are used. People are not really getting the full amount—

Senator RUBIO. I am sorry to interrupt. I want to clarify that in my mind. So the way it reads is, so I own a store that sells whatever and since I do not have as many customers, I do not have to have as much inventory. Therefore, I do not need as much money. That is the—



Mr. DIEP. Right. So that is kind of their thinking. So they discount all your claims by—it is an arbitrary number, and the number is hard to calculate. That is one thing.

Two, the GCCF distinguishes you as a business or a small business from an individual claim by looking at your taxes and seeing whether you have a Schedule C. But recently, what we have encountered is that if on the Schedule C, which qualifies you as a business and guarantees you a \$25,000 minimum payout—

Senator RUBIO. Right.

Mr. DIEP [continuing]. They are going back and they are looking. If you did not file individualized expenses, itemized expenses, they are going back and they are moving a lot of these folks back into individual as claimants. So if you did not file—if you just filed a Schedule C Easy, they might put you back as an individual claim. And so there are these sole proprietors and individuals, or deckhands, fishermen, who are getting put back in the wrong bucket.

Senator RUBIO. But are not—they are in, like, contract labor type situations, folks are—is that what you are—or is it—

Mr. DIEP. Right, like small business owners, cleaners—

Senator RUBIO. Right.

Mr. DIEP [continuing]. Or sole proprietorships. They have a Schedule C which qualifies them as a business—

Senator RUBIO. Right.

Mr. DIEP [continuing]. But because they did not file under taxes itemized expenses, the GCCF is right now going back and considering—

Senator RUBIO. Reclassifying them as individuals?

Mr. DIEP. Reclassifying them—

Senator RUBIO. Right.

Mr. DIEP [continuing]. And kind of denying them their \$25,000 minimum.

Senator RUBIO. Even though they are not anyone's employee, per se, they are basically—

Mr. DIEP. Right. Right. Yes. There are problems with start-up businesses, businesses that started right before the oil spill, January 2010, that do not have the 2008, 2009 documents to fit in their formula are having trouble navigating the process. So there is no real system to deal with those individuals.

One problem that is of particular concern to me that might the cause of a lot of the delays that people are facing is that Feinberg, because he is overly cautious of fraud, is using some of the money, or I am not sure which of the \$20 billion, but he is hiring private investigators to investigate claims of fraud, and I am not entirely sure that that is his place. He might refer those that they are suspicious about to the FBI or whoever. But I am not sure it is the GCCF's place to be investigating claims of fraud. Furthermore, he is not providing notice to the individuals being investigated, which might have some, you know, Fourth Amendment type concerns.

Senator RUBIO. Right.

Mr. DIEP. Finally—or not finally—the 90 days everyone keeps talking about, the 90 days comes from OPA. You have 90 days to review. But from Feinberg's perspective, it is 90 days from when the claim is substantiated, which means you can turn in all your documents, but the 90 days does not start counting until they feel

that they have everything that they need to sit down and review your claim. So you do not know when to start counting the 90 days. The standard review that they are using is a lot higher than you might even find in a court of law.

And finally, just as to the point in your opening comments, you said that the GCCF has about 190,000-something unique claims. The number is, as of July 8, 520,386 unique claims, but only 196,644 have been paid. But what is of concern is that of that amount that has been paid, 118,314 are quick pays, which means they are the kind that just say, "Fine, I give up. I want to take the money and just move on with my life." So I feel that because of the time delay, a lot of individuals are waiving their rights against BP and the other defendants—

Senator RUBIO. Because they need the money.

Mr. DIEP [continuing]. Because they need the money. So, thank you.

Senator RUBIO. The gentlemen standing next to you there is Captain Tande, who runs our office here. It sounds like you—I do not know if you wrote all that down during the hearing or if you have—but I would love to get something like that, not just for the record of the committee, but for our office if, indeed, we get involved in—as I expect we will—in some sort of reforms to the claims process, be they wholesale or partial. I would like to be able to point to some of the real world—I mean, it sounds like you have a wealth of knowledge, so if you could somehow communicate with us to get us a memo or something that outlines these points, that would be very helpful.

Mr. TANDE. He has my card.

Senator RUBIO. Oh, he does. Okay. Good.

Mr. KUGELMANN. Good morning, Senator. My name is Robert Kugelmann [phonetic]. I was an oil spill volunteer for Escambia County and also for the National Park Service.

I wanted to encourage you in Washington to take what steps you can to review through oversight the effectiveness of our natural energy regulatory mechanisms. I think that public citizens have not been able to maintain confidence, not only based on the Gulf Coast oil spill, but also what has happened in West Virginia in the coal mining industry and the fact that it turned out here in the Gulf Coast that many of the plans that were submitted as part of the permitting process, many of the emergency plans were really not serious efforts. They talked about wildlife that was common in Alaska, but nonexistent in the Gulf.

So we do want to encourage you and your colleagues up there to take a strong look to enforce accountability, and not only among public corporations that seem to need a heavy hand to comply with the spirit and letter of the law, but also with the Federal career service that is paid to review and to exercise oversight in these critical areas.

So thank you all for being here today.

Senator RUBIO. Thank you.

Ms. DUBIS. Hello and thank you again for coming to Pensacola to see firsthand how we feel about what is going on. We appreciate it, Senator.

Senator RUBIO. Thank you.

Ms. DUKES. My name is Dottie Dubis [phonetic]. I am a local resident and I do not own a small business, but since that is the focus for which this hearing was called, I want to call to your attention that there are a lot of small businesses that do not really fit into the tourism, fishery categories that you have spoken of but who were gravely impacted, and, in fact, many of whom have closed their doors and moved out.

In the particular building with which I am associated, we had a manufacturing organization that manufactured windows and doors and aluminum items which survived between hurricane seasons by doing refurbishing for beach houses. Unfortunately, with the impact of the Horizon, no one wanted to redo their beach house because they could not even conceive that they might be renting them out for several months. And so this business has folded. The five positions that were there are gone. And if you look at the population base of Pensacola, it has depreciated since the Horizon impact.

I was wondering if you might be able to somehow capture the funds that you do eventually end up with and assign them in a sort of a HUBZone, if you will, but maybe a Horizon Zone for the eight areas of Florida that were directly impacted, that that would be where a business would have to come and bring itself in order to benefit from it, rather than saying, we will spread it out and let it go elsewhere. If there is a company that is successful in Arkansas or Missouri or whatever that sees that they have an opportunity to do something that would impact positively, come and do it here. If you could somehow create an incentive program similar to the HUB and Empowerment Zones, but have it be a Horizon Zone, it might help.

Senator RUBIO. And it is a concept that we had discussed during the campaign. It was part of one of my ideas that we outlined. You have touched on one of the difficulties of this issue, and that is that you are absolutely right. There are the—and we are not discounting, because that is where the first wave of pain was inflicted, the hotels, the tourism industry, the fisheries, and all those sorts of things. But then from that, there is a spin-off effect. I mean, the bottom line is if one of your fishermen is making half as much money as they made a year ago, they have a lot less money to spend in the local economy, which ultimately impacts everybody. The trickle effect of it is very real.

The challenges politically, as you can imagine, in creating that chain and justifying it become harder, but I think what you have touched upon is some sort of a regional incentive program that will hopefully attract, the way that the oil spill may have detracted people from coming here, maybe reverse course on that. I do not—I think that that is something worth having a conversation, maybe outside the framework of the fine bill, but one that should be discussed.

Ms. KRAFT. Good morning. My name is Bethany Kraft [phonetic]. I am the Director of the Alabama Coastal Foundation and I am here today on behalf of our Florida members. We share an incredible resource in the Perdido area and I thank you all for taking the time today to solicit input from your citizens.

Just a couple of really quick comments specifically related to the Clean Water Act fine money. First, regarding your anticipation, Senator, of other members of Congress seeing the bright shiny object of fine money and trying to get a piece of that for their own constituents, I would really like to encourage you and your fellow Senators as you work on legislation and a bill reaching out on a regular basis to the nonprofit community who have extensive networks across the country and help us help you encourage citizens across the United States to continue to understand how important the gulf is to their life and how important it is for that money to come here for restoration.

In the wake of the oil spill, just my organization and two others in Alabama alone received over 10,000 calls from citizens across the country looking to make a connection to the Gulf of Mexico. We still communicate on a weekly basis with those 10,000 citizens, letting them know what is happening here and why their input is still so important. So I encourage you to keep us involved in the process and let us help put pressure on those elected officials who might see dollar signs in their eyes. Their citizens know how important the Gulf of Mexico is to their own livelihoods and are committed to restoration money coming here to the Gulf of Mexico.

Senator RUBIO. Well, again, your statement actually is a great example of why these hearings are so important. That is actually a great strategy. The truth is that my sense is that many of my colleagues who are committed to conservation and the environment probably have conservation and environmental projects in their home state and they see this as an opportunity to take some money for that. And it would be great—I am not sure if I am being naive, but it would be great if the conservation and environmental community outside of government would tell them, thank you, we appreciate you doing that, but if this ever happens to us, we would like all that money to come to us, and since this is happening to them, we as a community have taken the position that this money should go to the Gulf region.

I do not know if that is unrealistic. I do not know how hard it is for people to walk away from that. But that would be great, if that is the kind of national message that we could get out to our friends in the Senate and in the House.

Ms. KRAFT. Well, we are absolutely ready and willing to help you with that.

Secondly, just really quickly, I was happy to hear the idea of the Clean Water Act fine money, the projects driving the money and not looking at it from a specific geographical boundary perspective. I think that the Gulf ecosystem as a whole deserves better and we have a responsibility to take advantage of what could amount to a huge opportunity for us to bring the Gulf of Mexico back to a place that will sustain not only us, but our children and our grandchildren.

Toward that end, I would love to see the final Clean Water Act bill contain some basic guidelines that will help ensure that the projects are, first and foremost, in the minds of our politicians and our citizens and all of our community leaders, guidelines that look at the root causes of what has caused the Gulf of Mexico problems in the past five or six decades.

When you are talking about habitat loss, when you are talking about why your fisheries have declined, which lead to restrictive regulations which make it more difficult to increase your catch limits, these are the things that we need to be looking at and putting that into the legislation, saying we want to address the root causes of degradation in the Gulf of Mexico. We do not just want to put band-aids. We want to see projects that build on each other. We do not want to see discrete little things that end up amounting to a non-scalable change.

We have guidelines that we are putting forth in the environmental community, and I think that you could easily make the argument to do that on the economic side, as well. But coming up with some broad priorities at the Federal level within the bill will help ensure that that money does not just disappear into small projects that do not bring us forward as a community. Thank you.

Senator RUBIO. Thank you.

We are getting close to wrapping up. We have probably time for one or two more statements or questions, if there is anyone left. These lights make it hard to see out into the audience.

Mr. ATTARDO. Good morning, Senator.

Senator RUBIO. Good morning.

Mr. ATTARDO. I am Lew Attardo and I was formerly the Director of the Office of Small Business Advocate in the Florida Small Business Regulatory Advisory Council during the time of the oil spill. As some of you know, we worked with our local legislative delegation from northwest Florida on a strategy for trying to revitalize the regional economy as a result of this spill, particularly on what we could do for small and medium-size enterprises that would be adversely affected.

One of the things that we did was immediately after the spill is we went on-site to locations along the beaches within two weeks after the Deepwater Horizon disaster occurred and we listened to businesses. And as you have heard today, it was not just fishermen and the bait shops and the property owners that had rentals, but also everything from janitorial companies that had contracts for cleaning condos between residents to manufacturing companies who saw a dip in their business and in some cases actually folded up because of the loss of business.

What is most important, I think, is the fact that as an organization, through the Office of Small Business Advocate, we submitted a report to the legislature in Florida and to both Governor Crist at the time and then Governor Scott when he came into office on a strategy that we presented to the EDA team that was here with the International Economic Development Council that did the surveys post-disaster about what needed to be done to transform and recover.

One of the things that we recommended was there needed to be a long-term strategy, a five-year and a ten-year plan, on how to diversify the region's economy, how to support small and medium-size enterprise development, and what would be necessary for that recovery to take place. Those plans included several strategies for business retention and expansion, including some innovative ideas on things like subsidizing the fishing industry to purchase fish as we do with other food supplies to put into the public school system,

to introduce in the public schools fish, as an example, as being properly prepared and properly handled, and that would, first, support the local businesses immediately, is by putting fish in schools, and secondly, help to provide a new generation of potential seafood and fish eaters that might not get it in their homes otherwise.

But beyond that, bigger programs like small business loans that would be necessary to help with recovery, because we knew a year ago that the BP funding was not going to be immediate. It would take time. There is a report on that, and I will be glad to leave a copy with your staff, on what was recommended at the time on various strategies for economic recovery and diversification, what would be necessary to boost and revitalize the area's economy, and as I think others have voiced today, is to make sure that those funds that were committed to supporting this region along the Gulf Coast, Florida and the other affected states, stays in this region through some kind of a program that would endow the funds through foundation or some kind of a regional Gulf Coast Economic Development Program that would help support the region's needs over the next five to ten years while we try to figure out how we recover and how we rebuild the economy after that disaster.

So thank you very much for coming today.

Senator RUBIO. Thank you.

We have time for one more.

Mr. ELLINGTON. Thank you, Senator and distinguished guests. My name is Ron Ellington. I am with Innisfree Hotels. We have six hotels, three on Pensacola Beach, three on Orange Beach, Alabama. We have just filed our final claim with the GCCF for those six hotels.

One of the things that we addressed in there that everybody, I am sure, has already spoken to, and I apologize, I was a little late, so if I am asking a question you have already addressed, but it is the volume of oil that is still in the gulf that we are still fearful that we will see again with any kind of storm that brings it back up on our beaches. And one of the things we are having to address in this claim, obviously, is how do we deal with that potential liability and the fear of that reoccurrence and the cost that that brings again.

In your bill, or in the bills pending, is there anything in there that would address finding that oil and remediating it?

Senator RUBIO. First of all, the bill has not been fully vetted yet. It has not even been introduced publicly yet, so we will know more about that in the next few days.

In the conversations that I have had—and that does not mean it is not in there, I could be wrong—but in the conversations that I have had, I have not heard discussion about that issue. I think it is an issue that I have heard here today, I will not say for the first time, but certainly in the most persuasive way possible has been this persistent concern that the full impacts of the oil spill may not be known until sometime in the future when either some other event or by natural process we begin to see some secondary effects that are dramatic and have real repercussions, and the fear is at that point—let us say it happens four years from now where we—let us say two or three years from now, your fishermen are coming back and reporting some really bizarre things, or worse, we

have a storm and all this oil reemerges and washes up on the beaches and have these massive kills. What process will be in place to address it three or four years down the road—two or three years down the road?

I think the very persuasive argument has been made with regards to that. How we address it is something we are going to continue to look for your input. I have not heard it discussed to the level that it has been discussed here today. That does not mean it is not being discussed at that level. That does not mean that some other Senators do not have it on their mind. But that is why we do these things, because in the midst of all these issues that are flying around, to really identify some of these things that would not otherwise emerge, maybe even in a hearing in Washington, is so critical. It is certainly something I am going back with as part of our message.

Well, I want to thank all of you for joining me here today. A couple of things I want to tell you is that if you were unable to—let us say you have something you wish was on the record for the committee and it occurred to you afterwards or just did not have the time today, or we did not have the time to get to you, you can submit that in writing to be part of the record of this hearing. That record is going to remain open for the next two weeks. So for the next two weeks, if you have something that you want to see made part of the record here today, you can submit that either through my office or through the Committee on Small Business and Entrepreneurship.

I want to thank all the members of the panel. We took a lot of your time and I am grateful to you for being a part of this and for your input. Hopefully, we will be able to come back to you in a few weeks or months with an update on the status of the fine bill and hopefully some progress on the claims process.

With that, the hearing is adjourned.

[Whereupon, at 11:23 a.m., the committee was adjourned.]





## **APPENDIX MATERIAL SUBMITTED**

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22811 Panama City Beach Parkway, #26  
Panama City Beach, Florida 32413  
July 18, 2011

The Honorable Marco Rubio  
United States Senate  
317 Hart Senate Office Building  
Washington, D.C. 20510-0904

Dear Senator Rubio:

Thank you for inviting us to attend your Senate Hearing Meeting in Pensacola on July 11. My husband, my mother and I were honored to be allowed to attend this most important meeting. Our son, a commercial fisherman, was unable to attend but wanted very much to be there. We deeply appreciate your "bringing Washington to the people" and your obvious concern for our plight as small business people on the Gulf Coast.

As owners of three small businesses directly affected by the BP Oil Spill, my husband and I share the general consensus that the "powers that be" at the GCCF and BP do not intend to "make whole" those most seriously affected (as their widespread TV commercials would like to portray). The following is our experience with the process:

1. Coastal Weddings

My husband and I have owned and operated a beach wedding business for almost 10 years. We depend on the cleanliness of our beach to book couples who want to be married on the Emerald Coast—usually barefoot at sunset. Due to the oil spill, our business has virtually collapsed. With pervasive fear that oil could reappear at any time, most brides and grooms don't want to risk one of the most important days of their lives to such a potential catastrophe. Since most weddings are booked months and up to a year in advance, the uncertainty of the status of the beaches is too risky for most couples. To date, we have received \$18,500.00 emergency money from BP which was received in October of 2010. Our interim claim has been denied. They want to settle with us for \$25,000.00.

2. Real Estate Career

I am a licensed Florida Realtor, who specializes in commercial real estate. I have multi-million dollar listings (as can be seen on Loopnet.com). I have been working on these property listings and relationships with their owners since 2006. I stood to make hundreds of thousands of dollars in commissions relevant to the sale (and in some cases the leasing) of these properties. My Broker and I have long anticipated the opening of the new Northwest Florida Beaches International Airport in Panama City Beach as a significant boon to the fruition of our efforts. The new airport opened on May 23, 2010—26 days after the oil spill began. Although the new airport has been successful in terms of bringing more passengers than the old airport, the much anticipated arrival of real estate investors did not materialize. Again, the "pervasive fear" of the

negative impact on property values has kept them away. I have not yet filed a claim with BP on my real estate business.

During the last four years as a commercial Realtor, I have had the privilege of leasing, developing and opening six restaurants for a Chinese family from New York. As a result of my experiences with them and my former career in the health care industry (where I was the Executive Director of several nursing homes and one hospital department), I bring much food service/hospitality experience to the table. I ran food service 24/7 for hundreds of residents, staff and visitors. Depending on my vast experience and innate passions, I carefully planned and opened Fast Freddie's Burger Shop & Café-- a life-long "dream-come-true" of mine as described below.

3. Fast Freddie's Burger Shop & Café

My dream has always been to feed people and to feed them well. I have wanted to own and operate a restaurant since I was 12 years old. My husband has always been in the hospitality industry, so our partnership was most natural. Our carefully designed (and deliberately conservative) business plan would have made it possible for us to earn a fairly good living. But that was not to be. (Note: I will be happy to send you a copy of the business plan, if you like).

We began the planning process for this new business in 2009 and the licensing and leasing process in early 2010. Our café space was selected and the lease was signed on April 10, 2010. Our small "mom & pop" café opened on April 28, 2010, just 8 days after the oil spill began. We did not enter into this business lightly and without due consideration. As mentioned above, our planning and development of the business began much earlier.

Our carefully selected location was right across the street from the Gulf, in the midst of the very busy Thomas Drive tourist corridor. Our plan was that, at this location, and with the opening of the new airport, we could have a thriving restaurant and also book weddings and initiate real estate transactions, as well. In other words, all three of our business would be ongoing and successful as operated out of this strategic location. Those dreams collapsed in fairly short order. We have received \$64,000.00 in emergency funds from BP (received September 2010). We used every cent of this money to try to keep our businesses afloat. We have not received anything since the initial emergency funds even though we filed an interim claim in April 2011. Our café closed its doors on May 9, 2011. We fully intend to re-open (obviously in a new location, since we lost our former lease) when we receive the interim and on-going reimbursement for our losses that is due to us.

The following are just some of the hurdles we have encountered:

1. Kenneth R. Feinberg initially represented himself as an "independent" administrator of the funds allocated to pay out losses to individuals and business as a result of the oil spill. NOTHING COULD BE FURTHER FROM THE TRUTH. Originally, the GCCF website proudly touted this "independent" status—now the website (and the recorded message on their toll free number-1-800-916-4893) has been reluctantly forced to say that "the GCCF and it's

administrator, Kenneth R. Feinberg, act for and on behalf of BP.” Obviously, this fact nullifies any non-biased, objective representation of the individuals and businesses affected by this disaster.

He is paid millions of dollars per month by BP to ensure that he carefully withholds as much money as possible. I would suspect that he is also handsomely rewarded (perhaps in bonuses or other incentives) to hold out on claims as long as possible so that claimants will either die, give up or just “go away.” Instead of hiring more people to handle claims, he has cut back service hours, days open and has closed some claims offices entirely. Yet he is woefully negligent in paying claims timely. Since he answers to no one, is it any wonder?

2. BP’s tax exempt status is an outrage. All the monies BP pays out to claimants are TAX DEDUCTIBLE. They are able to claim these payouts as “marketing expenses.”
  3. If claimants are “reimbursed” at all, they must take a payout that is “less the expenses they might have incurred.” Who decided this and on what basis? The answers are: Kenneth R. Feinberg and because it is personally financially advantageous for him to do so.
  4. All reimbursed losses are 100% taxable to us as ordinary income. I can’t even begin to respond to that.
  5. Untrained and misinformed representatives manning the local GCCF offices and the toll free “help” line. My husband and I were going to take the quick final payment on our wedding business (Coastal Weddings) in March in order to try to save our café and our other two businesses. Just by chance, the GCCF attorney liaison overheard our conversation with one of the representatives. She called my husband over to her desk and said “I can’t represent you but you need to check the status of how you file your federal income taxes before you go any further. You need to talk to your accountant.” With that advice, thankfully we learned that if we had settled with one of our businesses, WE GAVE UP THE RIGHT TO FILE CLAIMS ON ALL OF THEM! Yet the GCCF rep had assured us that as long as we had separate Tax ID numbers that this was not the case. The truth is that because we file a Schedule C (which lists all our sources of income). Because we file our taxes this way, to have accepted a final payment on ONE of our businesses would have destroyed our ability to claim anything on the other two as a result of this ONGOING disaster!! We count ourselves extremely blessed to have encountered this obviously honest attorney who could not sit by and watch as we were misinformed.
- I know this is an ongoing problem as I was helping one of my Chinese restaurant-owner clients file a claim for his two businesses. He, too, was told that as long as he had separate Tax ID numbers that one claim would not affect the other. Again, not true! I shudder to think of the number of businesses that probably were given the wrong information and gave up their rights to compensation for two or more separate businesses owned by the same people!

6. None of the claimants are entitled to "pain and suffering" in considering reimbursable losses. I would submit that most of the claimants' lives will never be the same. My husband and I watched in horror for months (via a small TV in the kitchen of our newly opened café) as millions and millions of crude oil gushed into our magnificent Gulf of Mexico.

Our entire way of life, not just our businesses, was being destroyed before our very eyes. Many sleepless nights ensued and that remains the case to this day. We see no end in sight. We have no income, our home is in foreclosure and our future is at best scary and uncertain. I believe you can see that plenty of pain and suffering has been inflicted.

***BP (and its administrator, Kenneth R. Feinberg) continue on their paths of business-as-usual, riding on, and breaking the backs of, hard working, honest citizens of the Gulf Coast Region of the magnificent United States of America.***

We have lost hundreds of thousands of dollars since the oil spill began. Our entire life savings has been exhausted. We are in our early sixties and don't have decades left to "start over." Our lives have been consumed by, and all but destroyed by, this singular event. We obviously are not afraid of hard work and personal sacrifice. We just ask for a fighting chance in the free market system for our businesses to recover and ultimately succeed.

We pray that you and the other members of Congress can cut through this maze of inconsistency, misrepresentations and shady dealings that personify the GCCF (BP). Kenneth R. Feinberg has been allowed to create and perpetrate a self-serving financial empire that he manipulates--unquestioned and unchecked.

Please help the people like us recover from the massive financial losses, and the incalculable damage to our quality of life, we encounter daily.

With deepest respect and admiration, and continued prayers for God's blessings upon you and yours, I remain,

Sincerely yours,

Bobbie Brigman

P.S. I would be honored to serve in your 2016 Presidential campaign!